

No. 11840

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE PULLMAN COMPANY, a corporation,
Appellant,
vs.

MAGGIE MAE TEUTSCHMAN,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

MAR 26 1948

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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Attorneys for Appellant.

RYAN & PELAY,
T. H. RYAN,

American Bank Building,
Portland, Oregon,

Attorneys for Appellee.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 174325

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,

Defendants.

NOTICE OF REMOVAL

To Maggie Mae Teutschman and Ryan & Pelay, her
Attorneys:

You and Each of You Will Please Take Notice
that the Defendants Southern Pacific Company and
The Pullman Company intend to file their petition
and bond for removal, copies of which petition and
bond are hereto attached and made a part hereof,
and that they will on Friday, the 17th day of Janu-
ary, 1947, at the hour of 9:30 o'clock a.m. thereof,
or as soon thereafter as counsel can be heard, apply
to the Presiding Judge of the above entitled court,
for an order removing the above named cause into
the District Court of the United States for the

District of Oregon, pursuant to the statutes of the United States made and provided therefor.

HAMPSON, KOERNER,
YOUNG & SWETT,
CLARENCE J. YOUNG,
Attorneys for Defendant,
Southern Pacific Company.

HUGH L. BIGGS,

Of Attorneys for Defendant, The Pullman Company. [1*]

[Title of Circuit Court and Cause.]

PETITION FOR REMOVAL

To the Honorable, the Circuit Court of the State of Oregon, for the County of Multnomah:

The petition of Southern Pacific Company and The Pullman Company, defendants in the above entitled action, appearing specially and for the sole and exclusive purpose of presenting this petition, show that heretofore and on or about the 7th day of January, 1947, the above entitled action, which is an action of a civil nature, was brought in this court by the above named plaintiff against your petitioners as defendants; that your petitioner, Southern Pacific Company, at the time of the commencement of said action was, ever since has been, and still is, a foreign corporation created by and existing under laws of the State of Kentucky, and

*Page numbering appearing at foot of page of original certified Transcript of Record.

at all of said times was and still is a citizen and resident of the State of Kentucky, and a non-resident of the State of Oregon; that your petitioner, The Pullman Company, at the time of the commencement of said action was, ever since has been, and still is, a foreign corporation created by and existing under laws of the State of Illinois, and at all of said times was and still is a citizen and resident of the State of Illinois, and a non-resident of the State of Oregon.

That plaintiff, Maggie Mae Teutschman, at the time of the commencement of said action was, ever since has been, and [2] still is, a citizen and resident of the State of Oregon.

That said action is one of a civil nature in which there is a controversy between citizens of different states, and that the amount in dispute in said action, exclusive of interest and costs, is the sum of \$40,000.00.

That said action is pending undetermined in this Court, and that the time has not yet arrived at which these defendants are required by the laws of the State of Oregon, or the rules of the Circuit Court of the State of Oregon, for the County of Multnomah, the court in which this action is brought, to answer or otherwise plead to the complaint of plaintiff, and that no application has been made to any court or judge for the order to be applied for in this petition.

That your petitioners desire to remove this action before the trial thereof, and within thirty days from the date of filing this petition, into the District

Court of the United States for the District in which this action is pending, to wit, the District Court of the United States, for the District of Oregon, and your petitioners make and file with this petition a bond with good and sufficient surety thereon, for their entering in such District Court of the United States, within thirty days from the date of the filing of this petition, a certified copy of the record in this action, and for their paying all costs that may be awarded by the said District Court of the United States for the District of Oregon, if said District Court shall hold that this action was wrongfully or improperly removed thereto.

And your petitioners pray that said surety and said bond may be accepted and that this action may be removed into the District Court of the United States, for the District of Oregon, pursuant to the statutes of the United States in such cases made and provided, and that no further proceedings may be had herein in this court, except the order to remove as required by law, and that your Honorable Court make an order approving said bond and [3] an order of the removal of this action, and to that end your petitioners will ever pray.

SOUTHERN PACIFIC
COMPANY,

By CLARENCE J. YOUNG,

One of Its Attorneys.

THE PULLMAN COMPANY,

By HUGH L. BIGGS.

One of Its Attorneys.

State of Oregon,
County of Multnomah—ss.

I, Clarence J. Young, being first duly sworn, depose and say that I am one of attorneys for Southern Pacific Company, a corporation, one of defendants within named; that I have read the foregoing petition for removal, and that the matters and things therein set forth are true as I verily believe.

CLARENCE J. YOUNG,

Subscribed and sworn to before me, this 15th day of January, 1947.

[Notarial Seal] DOROTHY THAIN,

Notary Public for Oregon.

My Commission Expires December 20, 1948. [4]

State of Oregon,
County of Multnomah—ss.

I, Hugh L. Biggs, being first duly sworn, depose and say that I am one of attorneys for The Pullman Company, a corporation, one of defendants within named; that I have read the foregoing petition for removal, and that the matters and things therein set forth are true as I verily believe.

HUGH L. BIGGS.

Subscribed and sworn to before me this 16th day of January, 1947.

[Notarial Seal] CAROLINE EVANS,

Notary Public for Oregon.

My Commission Expires March 17, 1948. [5]

[Title of Circuit Court and Cause.]

UNDERTAKING

Know All Men by These Presents, that we, Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, and The Pullman Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, as principals, and James A. Lathrop, of Portland, Oregon, as surety, are held and firmly bound unto Maggie Mae Teutschman, in the penal sum of Five Hundred Dollars (\$500.00) lawful money of the United States, for the payment of which sum well and truly to be made unto the said Maggie Mae Teutschman we bind ourselves, our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

This bond is upon the condition, nevertheless, that whereas said Southern Pacific Company and The Pullman Company, the principal obligors herein and defendants in the above entitled action, have filed their petition in the above entitled action in the Circuit Court of the State of Oregon, for the County of Multnomah, for the removal of a certain cause therein pending wherein the said Maggie Mae Teutschman is plaintiff, and the said Southern Pacific Company and The Pullman Company are defendants, to the District Court of the United States, for the District of Oregon.

Now, Therefore, if the said Southern Pacific Company and The Pullman Company shall enter in said District Court of the [6] United States, for the Dis-

trict of Oregon, within thirty days from the filing of their petition for the removal of said cause, a certified copy of the record in said action, and shall well and truly pay all costs that may be awarded by the said District Court of the United States, for the District of Oregon, if the said District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be null and void, otherwise to remain in full force and effect.

In Witness Whereof, said Southern Pacific Company and The Pullman Company, as principals, have caused this instrument to be executed, respectively, by one of their attorneys, and James A. Lathrop, as surety, has hereunto set his hand and seal this 15th day of January, 1947.

SOUTHERN PACIFIC
COMPANY,

By CLARENCE J. YOUNG,
One of Its Attorneys.

THE PULLMAN COMPANY,
By HUGH L. BIGGS,
One of Its Attorneys.

JAMES A. LATHROP,
Surety.

State of Oregon,
County of Multnomah—ss.

I, James A. Lathrop, being first duly sworn, on oath depose and say that I am surety on the within bond; that I am a resident and householder within

said County and State; that I am neither an attorney nor counselor at law, sheriff, clerk, or other officer of any court, and that I am worth over and above all my debts and liabilities, exclusive of property exempt from execution, a sum in excess of One Thousand Dollars (\$1,000.00).

JAMES A. LATHROP.

Subscribed and sworn to before me this 15th day of January, 1947.

[Notarial Seal] DOROTHY THAIN,

Notary Public for Oregon.

My Commission Expires December 20, 1948. [7]

[Title of Circuit Court and Cause.]

ORDER OF REMOVAL

At this time come the defendants above named, Southern Pacific Company and The Pullman Company, and present a petition asking for the removal of the above entitled action from the Circuit Court of the State of Oregon, for the County of Multnomah, to the District Court of the United States, for the District of Oregon, which petition sets forth the reasons for said removal, to wit:

That this action is of a civil nature and that the amount in dispute, exclusive of costs and interest, is the sum of \$40,000.00; that the controversy in this action is between citizens of different states, plaintiff being a citizen and resident of the State of Oregon, and the defendant Southern Pacific Company being a citizen and resident of the State of

Kentucky and a non-resident of the State of Oregon, and the defendant The Pullman Company being a citizen and resident of the State of Illinois and a non-resident of the State of Oregon; and

It Further Appearing from said petition that said action is pending undetermined in this court, and that the time has not yet arrived at which these defendants are required by the laws of the State of Oregon, or the rules of the Circuit Court of the State of Oregon, for the County of Multnomah, the court in which this action is brought, to answer or otherwise plead to the complaint of plaintiff, and that no application has previously [8] been made to any court or judge for the order applied for in said petition; and

It Further Appearing to this court that said Southern Pacific Company and The Pullman Company have presented a bond to this court as is provided by law, and it further appearing to this court that said bond and petition are sufficient to authorize the removal of said action to the District Court of the United States, for the District of Oregon;

Now, Therefore, It Is Hereby Considered, Ordered and Adjudged that said bond be and it is hereby accepted and approved, and that this court proceed no further in this action. and that the same be and it is hereby transferred to the District Court of the United States for the District of Oregon, and that the clerk of this court prepare and file a complete copy of the record of this court in the above entitled action and certify to the same as a copy of said record, and forward the same to the clerk of

the District Court of the United States, for the District of Oregon, within thirty days from the filing of the petition herein.

Dated at Portland, Oregon, this 17th day of January, 1947.

/s/ CHARLES W. REDDING,
Judge.

This Transcript of Removal from Multnomah County filed February 12, 1947. [9]

In the District Court of the United States
for the District of Oregon

No: Civ. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff.

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,

Defendants.

AMENDED COMPLAINT

Comes now the plaintiff and with leave of Court files her amended complaint herein and alleges as follows:

I.

That defendant, Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky and registered to do bus-

iness in the State of Oregon, and that Frank C. McCulloch of Portland, Oregon, is their attorney in fact for service in Oregon.

II.

That the defendant, The Pullman Company, is a corporation organized and existing under the laws of the State of Illinois and registered to do business in the State of Oregon, and that P. L. Pflager is their attorney in fact for service in the State of Oregon.

III.

That at all times herein mentioned defendant, Southern Pacific Company, operated and maintained a railroad between the City of Los Angeles, California, and the City of Portland, Oregon; and offered to the public passenger service between said points.

IV.

That the defendant, The Pullman Company, at all times herein mentioned operated a sleeping car service in conjunction with the passenger service [10] of the Southern Pacific Company between Los Angeles, California, and Portland, Oregon, and offered to the public accommodations for sleeping on said trains operated by defendant, Southern Pacific Company.

V.

That plaintiff is an elderly woman of the age of 61 years and unfamiliar with travel on trains and use of sleeping accommodations.

VI.

That on or about the 9th day of January, 1946, plaintiff purchased for valuable consideration from defendants, and each of them, a railroad ticket on defendant, Southern Pacific Company's passenger train from Los Angeles, California, to Portland, Oregon, and a lower berth accommodation for the night of January 9th and 10th on defendant, The Pullman Company's sleeping car attached to said defendant, Southern Pacific Company's train. Plaintiff boarded the train at Los Angeles and that while on route to Portland entered the sleeping car operated by the defendants, and each of them, and was informed by defendant's agent in attendance therein that her sleeping accommodation was not for a lower berth but for an upper berth and that no lower berth was available on said train. Plaintiff informed defendant's agent that she had never used an upper berth and was not acquainted with the use thereof, but because no lower berth was available plaintiff accepted the assistance of defendant's agent and entered said upper berth with said assistance and lay thereon without removing her clothes. Defendants' agent failed at that time, or thereafter, to fasten the curtain and protective straps or to inform plaintiff about the same. Plaintiff fell asleep fully dressed, and on or about January 10, 1946, was violently thrown to the floor by the negligent operation of said train, causing injuries as hereinafter more fully set forth.

VII.

That said fall and the injuries resulting therefrom was the sole and proximate result of the negligent manner in which defendants, and each of them, operated and maintained said train, car, berth and equipment and the failure of defendants and each of them to exercise the high *degree* of care required of them toward passengers unfamiliar with travel and in particular of the plaintiff herein in requiring plaintiff to take an upper berth after she had purchased a lower berth.

By order	{	The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.
9/29/47		
R De		

VIII.

That as a result of the negligence of defendants, and each of them, plaintiff received a fracture of her right femur and a permanent lameness of the right leg; permanent injuries to the muscles, ligaments, tendons and vertabrae of the neck and spine; severe and permanent shock and injury to her nervous system; general bruises, contusions and abrasions and suffered a straining and spraining of the muscles, ligaments and tendons of the right side; and plaintiff further suffered a serious and painful

aggravation of a previously existing injury to her right hip and leg and a severe aggravation of a previously slight condition of lameness; that said injuries are severe, painful and permanent and that plaintiff is required to take sedatives to ease pain and induce sleep; that she was confined in the hospital and her home for approximately 11 months and had applied to her right leg and thigh a long spica cast, all to the plaintiff's damage in the sum of \$37,500.00.

IX.

That as a sole and proximate result of the negligence of the defendants, and each of them as hereinbefore stated, plaintiff was required to employ the service of physicians, surgeons and nurses, and persons to assist her in caring for herself at home; to undergo general hospital treatment and surgical care; purchase drugs, surgical aids and ambulatory aids and to employ ambulances, taxicabs and transportation; that the costs of said treatment, equipment and transportation has been to date the sum of \$2500.00, and plaintiff reserves the right to amend her complaint at time of trial to include any further expenditures.

Wherefore, plaintiff demands judgment against the defendants, and each of them, jointly and severally in the sum of \$37,500.00 as general damages and [12] the sum of \$2500.00 as special damages, and for her costs and disbursements incurred herein.

RYAN & PELAY,

Attorneys for Plaintiff.

By T. H. RYAN,

[Endorsed]: Filed June 3, 1947. [13]

[Title of District Court and Cause.]

ANSWER

Defendant The Pullman Company for its answer to plaintiff's complaint admits, denies and alleges:

I.

This defendant admits the allegations contained in paragraph I of plaintiff's complaint.

II.

This defendant admits the allegations contained in paragraph II of plaintiff's complaint.

III.

This defendant admits the allegations contained in paragraph III of plaintiff's complaint.

IV.

This defendant admits the allegations contained in paragraph IV of plaintiff's complaint.

V.

This defendant denies generally each and every other allegation, matter and thing in plaintiff's complaint contained, and the whole thereof, except as to the matters and things hereinafter admitted stated or qualified. [14]

For an Affirmative Answer and Defense, this defendant alleges:

I.

On or about the 9th day of January, 1946, at Martinez, California, plaintiff, who was en route from

Los Angeles to Portland via Southern Pacific lines, boarded this defendant's tourist car KG which was a part of defendant Southern Pacific's northerly-bound passenger train No. 18. Plaintiff purchased space in upper berth No. 14 on said car, and shortly after boarding the car entered said berth with the assistance of a porter who thereupon drew together the curtains of said berth. Prior to plaintiff's entering the berth the curtains thereon had been securely fastened at top and bottom to rods which were secured to the car and which extended the full length of and parallel with the berth. The curtains were so equipped and designed that they could readily be buttoned and fastened from the inside of the berth by the occupant thereof. Some time after plaintiff had retired and after the train had left Red Bluff, California, and was proceeding toward the next station north thereof, plaintiff, who in a manner unknown to this defendant had descended from said berth, was found lying on the floor in the aisleway of said tourist car.

II.

If, as plaintiff alleges in her complaint, she accidentally fell from said upper berth, she was careless, reckless and negligent in the following particulars:

- (a) She failed to take any care or precaution for her own safety;
- (b) She failed to button and fasten together the curtains of the berth;

- (c) She permitted or caused said curtains to be parted in such a way as to permit her to fall or depart from said berth;
- (d) She failed to use her senses and faculties so as to avoid injury to herself.

III.

Plaintiff's negligence was the proximate contributing cause of her fall and such injuries as she may have sustained as a result thereof.

Wherefore this defendant having fully answered plaintiff's complaint demands judgment that plaintiff take nothing by reason thereof as to this defendant, that this action be dismissed as to this defendant, and that this defendant have and recover of and from plaintiff its costs and disbursements incurred herein.

HUGH L. BIGGS,
Of Attorneys for Defendant
The Pullman Company.

HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Defendant
The Pullman Company.

[Endorsed]: Filed February 13, 1947. [16]

[Title of District Court and Cause]

REPLY

Comes now the plaintiff and in reply to defendant, The Pullman Company's answer, denies and alleges as follows:

I.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's answer, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

In reply to defendant, The Pullman Company's affirmative answer and defense plaintiff alleges and denies as follows:

I.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's answer, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

And in reply to the answer of the defendant, Southern Pacific Company, plaintiff alleges and denies as follows:

I.

Denies each and every allegation, thing and matter contained in defendant's first defense, and the whole thereof.

II.

Denies each and every allegation, thing and matter contained in defendant's second defense and the whole thereof, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

III.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's third defense.

Wherefore, having fully replied demands that the relief prayed for in the answer of the defendants, and each of them, be denied and plaintiff be granted the relief as prayed for in her complaint on file herein.

RYAN & PELAY,
T. H. RYAN,
Attorneys for Plaintiff.

Service of the foregoing Reply by receipt of a duly certified copy thereof, in Multnomah County, Oregon, on the 19th day of February, 1947, hereby is accepted.

/s/ JOHN GORDON GEARIN,
Of Attorneys for Defendant
Southern Pacific Company.

/s/ HUGH L. BIGGS, c.e.,
Of Attorneys for Defendant
The Pullman Company.

[Endorsed]: Filed March 3, 1947.

[Title of District Court and Cause]

ORDER

Pursuant to stipulation heretofore entered herein and for good cause shown, and the Court being fully advised in the premises,

It is now ordered that a Judgment of Dismissal without prejudice in favor of defendant Southern Pacific Company and against plaintiff be and the same is hereby entered herein.

Dated at Portland, Oregon, this 13th day of June, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed] Filed June 13, 1947. [19]

[Title of District Court and Cause]

PRE-TRIAL ORDER

This cause came on regularly for pre-trial before the Hon. James Alger Fee, Judge of the above entitled court, on July 14, 1947, and was concluded on the date hereof. The plaintiff appeared by Thomas Ryan, her attorney, and the defendant, The Pullman Company, appeared by Manley B. Strayer, of its attorneys.

Based on the proceedings had at said pre-trial hearing

It is hereby ordered as follows:

I.

Simplification of Issues

1. The Pullman Company is a corporation duly organized and existing under the laws of the State of Illinois and licensed and authorized to do business in the State of Oregon. Plaintiff is a resident and inhabitant of the State of Oregon and the matter in controversy, exclusive of interest and costs, exceeds the sum of \$3000.00.

2. At all times referred to herein, Southern Pacific Company operated and maintained a railroad between Los Angeles, California, and Portland, Oregon, and offered to the public passenger service between said points. The defendant, The Pullman Company, during all such times, operated a sleeping car service in conjunction with the passenger service of Southern Pacific Company between [20] Los Angeles, California, and Portland, Oregon, and offered to the public accommodations for sleeping on said trains operated by Southern Pacific Company.

3. The plaintiff is an elderly woman of the age of 61 years. The plaintiff alleges and the defendant denies on information and belief that the plaintiff was unfamiliar with travel on trains and use of sleeping accommodations.

4. On or about the 9th day of January, 1946, plaintiff purchased for a valuable consideration at the Southern Pacific Company ticket office in Los Angeles, California, a railroad ticket on Southern Pacific Company's passenger train from Los Angeles, California, to Portland, Oregon, and a Pull-

man Company berth on the defendant Pullman Company's sleeping car on the Southern Pacific Company's train. Plaintiff contends and the defendant denies that the plaintiff purchased a lower berth accommodation for such trip.

5. On January 9, 1946, plaintiff boarded a Southern Pacific Company train at Los Angeles, California, and traveled by day coach to Martinez, California. At the latter point she boarded Southern Pacific Company's northbound passenger train No. 18, and entered the defendant Pullman Company's tourist car 4199 (KF) attached to said train. Plaintiff was assigned to upper berth No. 14 in said car and entered such berth with the assistance of a porter.

6. Plaintiff contends and the defendant denies that upon entering such car she informed the defendant's conductor and porter that she had purchased a lower berth and that she had never used an upper berth and was not acquainted with the use thereof; that defendant's conductor informed her that her ticket was for an upper berth and that no lower berth was available and that for such reason she accepted the upper berth. Plaintiff contends that [21] there were no curtains on such upper berth and that if there were curtains the defendant's agents failed to close and fasten the same or to equip the berth with protective straps or to inform the plaintiff about the same and the use thereof. The defendant denies such contentions and contends that the berth was equipped with the usual Pullman curtains, securely fastened at top and bottom to rods

secured to the car, which extended the full length of and parallel with the berth; that after plaintiff had retired, an agent of the defendant closed said curtains and that they were so equipped and designed that the plaintiff could readily button and fasten the same from the inside of the berth. These contentions are denied by the plaintiff.

7. During the night of January 9, 1946, after the train had left Red Bluff, California, and was proceeding north, the plaintiff contends that she fell from her berth into the aisle of said Pullman car and that such fall was caused by the negligence of the defendant as hereinafter set forth. The defendant admits that at such time and place the plaintiff, in a manner unknown to the defendant, descended from the berth and was found lying in the aisle of said car, but denies the remainder of such contentions.

8. Plaintiff contends that she fell from her berth and received injuries resulting therefrom as the sole and proximate result of the negligence of the defendant in failing to equip said berth with curtains and protective straps, and to close such curtains and fasten the same; in failing to advise the plaintiff concerning the necessity and manner of properly fastening such curtains; and in requiring plaintiff to take an upper berth after she had purchased a lower berth. The defendant denies such contentions and contends that the plaintiff had no ticket for a lower berth on such car or train; that she had a ticket for an upper [22] berth on a different train; that upon her entering the car in

question the defendant informed her that she was on the wrong train; that no lower berth accommodations were available in defendant's tourist car 4199, and that at the plaintiff's request Defendant agreed to permit her to occupy upper berth No. 14 in such car, which contentions are denied by the plaintiff.

9. As an affirmative defense the defendant contends that any injuries which the plaintiff received were the proximate result of her negligent failure to take any care or precaution for her own safety; failure to button and fasten the curtains of her berth; permitting or causing the curtains to be parted in such way as to permit her to fall or depart from the berth; and failure to use her senses and faculties so as to avoid injury to herself. These contentions are denied by the plaintiff.

10. Plaintiff contends that as a result of such fall she received a fracture of her right femur and a permanent lameness of the right leg; permanent injuries to the muscles, ligaments, tendons and vertebrae of the neck and spine; severe and permanent shock and injury to her nervous system, general bruises, contusions and abrasions and a straining and spraining of the muscles and tendons of the right side; a serious and painful aggravation of a previously existing injury to her right hip and leg and a severe aggravation of a previously slight condition of lameness; that said injuries are severe, painful and permanent, and require her to take sedatives to ease pain and induce sleep; that she

was confined to a hospital and her home for approximately 11 months and had applied to her right leg and thigh a long spica cast, to her damage in the sum of \$37,500.00.

The defendant admits that in some manner unknown to the defendant the plaintiff received an injury to her right leg. [23] The defendant denies on information and belief the remainder of plaintiff's contentions.

11. Plaintiff contends that as a sole and proximate result of the negligence of the defendant she was required to employ the services of physicians, surgeons and nurses, and persons to assist in caring for herself at home; to undergo general hospital treatment and surgical care; purchase drugs, surgical aids and ambulatory aids and to employ ambulances, taxicabs and transportation; that the cost of said treatment, equipment, and transportation has been to date the sum of \$1,400.15. The defendant denies such contention upon information and belief.

II.

Issues

The issues to be disposed of on the trial of this cause are hereby limited as follows:

1. Whether the defendant was negligent in any of the respects alleged by the plaintiff and, if so, whether such negligence was the proximate cause of the injuries received by plaintiff.

2. Whether the doctrine of *res ipso loquitur* applies and, if so, whether the presumption thereunder has been overcome.

3. Whether the injuries received by the plaintiff were in any respect the proximate result of contributory negligence of the plaintiff, as contended by the defendant.

4. The nature and extent of the damages sustained by the plaintiff.

By order
9/29/47
R De

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

III.

Documentary Evidence

Exhibits introduced at the pre-trial are contained in [24] the list attached hereto and made a part of this order. All such exhibits were admitted without objection as to competency but each of the parties reserves the right to object to the exhibits at the time of the trial upon the ground that the same are irrelevant or immaterial. No other documents

or factual exhibits, other than those contained in said list, will be used at the trial or offered in evidence.

This order supersedes the pleadings which now pass out of the case. It shall not be amended at the trial except to prevent manifest injustice.

Ordered this 9th day of September, 1947.

CLAUDE McCOLLOCH,
District Judge.

List of Plaintiff's Pretrial Exhibits

1a. to 1L. X-ray films of plaintiff's body. Receipt for bills paid by plaintiff.

List of Defendant's Pretrial Exhibits

3. Deposition of Archie V. Fraser.

4. Deposition of Dr. H. R. McVicker.

5. to 8. Photographs of upper birth No. 14 of a tourist pullman car.

9. Office and working diagrams of pullman car No. 4199.

10. Statement of plaintiff, to be sealed and reopened and used on the trial for impeachment purposes only.

11. Deposition of plaintiff.

[Endorsed]: Filed September 9, 1947. [26]

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

THE PULLMAN COMPANY, an Illinois corporation,

Defendant

MEMORANDUM DECISION

I find the proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed. The complaint and pre-trial order may be amended to conform to the proof.

General damages of \$5,500.00 will be allowed and \$1,400.15 special damages.

Dated this 11th day of September, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed September 11, 1947. [27]

[Title of District Court and Cause]

ORDER

Based upon the Motion of attorney for plaintiff and Memorandum Decision rendered herein, and good cause being shown,

It is hereby ordered, that the amended complaint of the plaintiff on file herein be amended to include the following allegation:

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

And further, the pre-trial order on file herein is amended to include the following issue as contended by plaintiff:

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

And the said allegations may be deemed denied by defendant.

CLAUDE McCOLLOCH,
Judge.

Dated this 29th day of September, 1947.

[Endorsed]: Filed September 29, 1947. [28]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial before the above entitled Court, the Honorable Claude McCulloch presiding, on the 9th day of September, 1947, the plaintiff appearing in person and by her attorneys, T. H. Ryan and Anthony Pelay, Jr., of Ryan & Pelay, and the defendant corporation appearing by and through its attorney, Manley Strayer of Hart, Spencer, McCulloch & Rockwood, attorneys for the defendant, The Pullman Company, and the Court having heard the testimony and evidence produced by the plaintiff and defendant and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, the Court finds the following facts:

I.

That The Pullman Company is a corporation organized and existing under the laws of the State of Illinois and is authorized and licensed to do business in the State of Oregon.

II.

That The Pullman Company maintained and operated a sleeping car service in conjunction with the Southern Pacific Railroad Company's passenger service between Los Angeles, California, and Portland, Oregon. [29]

III.

That on or about the 9th day of January, 1946, the plaintiff was a paying passenger on the defendant's (The Pullman Company) said sleeping car service between Los Angeles, California, and Portland, Oregon, having purchased from said defendant a ticket for valuable consideration.

IV.

That on or about the 9th day of January, 1946, the plaintiff was injured by a fall from the upper berth occupied by and assigned to her by the defendant on defendant's (The Pullman Company) sleeping car.

V.

That plaintiff is an elderly woman not familiar with travel on sleeping cars and was in a confused and crippled condition, and the defendant (The Pullman Company) was aware of her condition and inexperience.

VI.

That it was a reasonable precaution and a legal duty of the said defendant (The Pullman Company), under the circumstances attendant at the time of this accident, to see that the safety of the plaintiff was safeguarded while in her berth and to see that the inside buttons on the upper curtain of the plaintiff's berth were fastened and secured; that said defendant (The Pullman Company) failed to fasten said buttons and thus to safeguard plain-

tiff while in said berth on said pullman sleeping car; and that by reason thereof defendant (The Pullman Company) was negligent and as a sole and proximate result thereof plaintiff suffered injury and damage.

VII.

That the sole and proximate cause of the plaintiff's injury was the negligence of defendant (The Pullman Company) as aforesaid in failing to see that the inside buttons on the said upper curtains were fastened. This would have kept plaintiff from [30] either falling out or getting out of said upper berth. In plaintiff's crippled and confused condition, which was known to defendant (The Pullman Company), it was the defendant's (The Pullman Company) duty to take all reasonable measures to save her from being harmed.

VIII.

That plaintiff was not guilty of any contributory negligence.

IX.

That by reason of the aforesaid facts plaintiff has suffered general damages in the sum of \$5,500.00 and special damages in the sum of \$1286.50 and is entitled to costs taxed at \$37.50.

As conclusions of law from the foregoing facts, the plaintiff is entitled to a judgment against the defendant, The Pullman Company, in the sum of \$5,500.00 general damages and \$1286.50 as special

damages, and for her costs and disbursements herein incurred taxed at \$.

/s/ CLAUDE McCOLLOCH,
Judge.

Dated this 4th day of October, 1947.

[Endorsed]: Filed October 4, 1947. [31]

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
corporation, and THE PULLMAN COM-
PANY, an Illinois corporation,

Defendants.

JUDGMENT

This action coming on to be heard on the 9th day of September, 1947, before the above entitled Court, Honorable Claude McCulloch presiding, the plaintiff appearing by and through her attorneys T. H. Ryan and Anthony Pelay, Jr., of Ryan & Pelay, and the defendant (The Pullman Company) appearing by and through its attorney, Manley Strayer of Hart, Spencer, McCulloch & Rockwood.

Evidence and testimony having been taken by both parties and arguments having been made by

respective counsel, the Findings of Fact and Conclusions of Law having been filed, and it further appearing that from the evidence that plaintiff was entitled to a judgment against defendant, The Pullman Company, in the sum of \$5,500.00 general damages and \$1286.50 special damages, and for her costs and disbursements herein incurred taxed at \$37.50.

Now therefore, it is hereby ordered that plaintiff take judgment against the defendant (The Pullman Company) in the sum of \$5,500.00 general damages and \$1286.50 special damages, and for her costs and disbursements herein incurred taxed at \$.....

/s/ CLAUDE McCULLOCH,
Judge.

Dated this 4th day of October, 1947.

Filed and entered in docket October 4, 1947.

[Endorsed]: Filed October 4, 1947. [32]

[Title of District Court and Cause.]

MOTION TO AMEND
FINDINGS OF FACT

Defendant, The Pullman Company, moves the court to amend its findings of fact and conclusions of law heretofore filed herein in the following particulars:

1. Striking out the finding of fact that it was a reasonable precaution and a legal duty of the said defendant (The Pullman Company), under the circumstances attendant at the time of this accident, to see that the safety of the plaintiff was safeguarded while in her berth.
2. Making the following additional findings of fact:
 - (a) That at the time and place of the accident the berth occupied by plaintiff was equipped with the usual Pullman curtains, securely fastened at the top and bottom to rods secured to the car, which extended the full length of and parallel with the berth.
 - (b) That after the plaintiff had retired the defendant, The Pullman Company, closed said curtains.
 - (c) That said curtains were so equipped and [33] designed that they could readily be buttoned and fastened from inside the berth, but could not be readily fastened from outside of the berth.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Defendant,
The Pullman Company.

To Maggie Mae Teutschman, plaintiff above named,
and to T. H. Ryan and Anthony Pelay, Jr., her
attorneys:

You are hereby notified that the foregoing motion will be heard before the United States District Court on Monday, October 27, 1947, at the hour of 10:00 o'clock a.m.

M. B. STRAYER,
Of Attorneys for Defendant,
The Pullman Company.

Due and legal service of the within Motion to amend Findings of Fact is hereby admited at Portland, Oregon, this day of October, 1947.

RYAN & PELAY,
Of Attorneys for Plaintiff.

[Endorsed] Filed October 14, 1947. [34]

[Title of District Court and Cause.]

MEMORANDUM ON MOTION TO
AMEND FINDINGS OF FACT

The motion to amend the findings is denied except as to 2(a). That part of the motion is allowed and the findings may be deemed amended accordingly.

Dated November 20, 1947.

CLAUDE McCULLOCH,
Judge.

[Endorsed]: Filed November 20, 1947. [35]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that The Pullman Company, an Illinois corporation, one of the defendants above named, appeals to the Circuit Court of Appeals for the Ninth Circuit from the judgment made and entered in the above entitled court and cause on or about October 4, 1947, and from each and every part of said judgment.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for defendant,
The Pullman Company.

[Endorsed]: Filed December 17, 1947. [36]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY ON APPEAL

The defendant, The Pullman Company, having filed its notice of appeal from judgment of this court to the Circuit Court of Appeals for the Ninth Circuit, and having designated portions of the record herein to be contained in the record on appeal, hereby files its statement of the points upon which it intends to rely upon appeal as follows:

1. The court erred in denying this defendant's motion to dismiss made at the close of the evidence in the case upon the grounds stated therein.

2. The court erred in finding that the defendant, The Pullman Company, was negligent.

3. The court erred in finding that negligence of the defendant, The Pullman Company, was the proximate cause of plaintiff's injuries.

4. The court erred in failing to find that the plaintiff was guilty of contributory negligence.

5. The court erred in permitting amendments to the amended complaint and pretrial order after the cause had been submitted.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for defendant,
The Pullman Company.

[Endorsed]: Filed January 7, 1948. [37]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

Defendant, The Pullman Company, having filed its notice of appeal from the judgment of this court to the Circuit Court of Appeals for the Ninth Circuit, hereby designates the following portions of the record and proceedings in this case to be contained in the record on appeal:

1. Transcript of removal proceedings from Circuit Court of Multnomah County, State of Oregon, to this court (including petition for removal, order of removal and other documents pertaining to such removal.)

2. Amended complaint.
3. Answer of defendant, The Pullman Company.
4. Reply.
5. Order of dismissal as to the defendant, Southern Pacific Company.
6. Pretrial order.
7. Transcript of testimony and proceedings at the trial, including all exhibits received in evidence and depositions of Dr. H. R. McVicker, Archie V. Fraser and Maggie Mae Teutschman.
8. Memorandum decision dated September 11, 1947.
9. Order dated September 29, 1947, to amend pretrial order and amended complaint.
10. Finding of fact and conclusions of law, showing date of entry thereof. [38]
11. Judgment dated October 4, 1947, showing date of entry thereof.
12. Motion to amend findings of fact, showing date of filing thereof.
13. Court's order on motion to amend findings of fact dated November 20, 1947, showing date of entry thereof.
14. Notice of appeal to Circuit Court of Appeals, with date of filing thereof.
15. Statement of points upon which appellant will rely on appeal.

16. Designation of contents of record on appeal.
17. Order to send original exhibits.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,

Attorneys for defendant and appellant, The Pullman Company.

[Endorsed]: Filed January 7, 1948. [39]

[Title of District Court and Cause.]

ORDER

On motion of defendant, The Pullman Company, it is ordered that the clerk of this court forward to the Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal of the above-entitled case, all original exhibits in accordance with the usual practice of this court in regard to the safe-keeping and transportation of original exhibits.

Dated at Portland, Oregon, this 19th day of January, 1948.

CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed Jan. 19, 1948. [40]

[Title of District Court and Cause.]

DOCKET ENTRIES

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- Feb. 12 Filed transcript on removal from Multnomah Co.
- Feb. 12 Filed answer of deft. Southern Pacific Co.
- Feb. 13 Filed answer of deft. Pullman Company.
- Feb. 24 Entered order setting for trial on April 22, 1947, notices, McC.
- Feb. 28 Entered order resetting for trial on May 13, 1947, notices, McC.
- Mar. 3 Filed reply of plaintiff.
- Mar. 5 Entered order resetting for trial on June on June 3, 1947, notices, McC.
- Mar. 20 Filed Deposition of Maggie Mae Teutschman.
- May 15 Entered order resetting for trial on June 17, 1947, notices, McC.
- June 3 Filed request for a jury.
- June 4 Filed affidavit.
- June 3 Filed and entered order permitting filing of amended complaint. McC.
- June 3 Filed stipulation for order permitting filing of amended complaint.
- June 3 Filed motion for order permitting filing of amended complaint.
- June 3 Filed amended complaint.
- June 3 Entered order canceling trial date, notices, McC.

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- June 13 Filed stipulation for order of dismissal as to Southern Pacific Co.
- June 13 Filed and entered order of dismissal as to Southern Pacific Co., notices, McC.
- July 7 Entered order setting for pretrial for July 14, 1947. Fee.
- July 14 Entered order setting for P. T. Conference Tuesday, Sept. 2, 1947, and for trial Tuesday, Sept. 9, 1947. Fee.
- July 28 Filed stipulation for depositions.
- Sept. 2 Filed Deposition of Dr. H. R. McVicker.
- Sept. 2 Filed Deposition of Archie V. Fraser.
- Sept. 3 Entered order striking from trial calendar, notified McC.
- Sept. 5 Entered order resetting for trial on Sept. 9, 1947 (trial by court), notified McC.
- Sept. 9 Record of trial before court; order to open sealed exhibit No. 10; argument on merits and order taking under advisement. McC.
- Sept. 9 Filed and entered pre-trial order. McC.
- Sept.10 Filed trial exhibits 1 to 5, 5½ to 13, inc. (in file) P. T. ex in J-3.
- Sept.11 Filed memorandum decision (4 ptff) copies at attys. McC.
- Sept.29 Filed and entered order to amend pretrial order and amended complaint. McC.
- Sept.29 Record of hearing in settlement of Findings of Fact and Conclusions of Law. McC.

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- Sept. 23 Filed motion to amend complaint and pre-trial order.
- Oct. 4 Filed and entered Findings of Fact and Conclusions of Law, notices, McC.
- Oct. 4 Filed and entered Judgment for plaintiff for \$5,500 general damages and 1286.50 special damages and costs.
- Oct. 4 Filed cost bill.
- Oct. 6 Entered judgment in Lien Docket.
- Oct. 14 Filed Pullman Co.'s motion to amend findings of fact.
- Oct. 24 Filed Notice to tax costs. [41]
- Nov. 10 Entered order amending motion to amend "Findings of Fact and record of hearing on motion to amend Findings of Fact—argued and submitted. McC.
- Nov. 20 Filed memorandum on motion to amend Findings of Fact.
- Dec. 11 Filed transcript of proceedings.
- Dec. 17 Filed The Pullman Co.'s notice of appeal.
- Dec. 17 Mailed copy of notice of appeal to Attys. Ryan & Pelay.
- Dec. 18 Filed stipulation re bond.
- Dec. 18 Filed bond for costs on appeal.
- Dec. 18 Filed and entered order approving bond. McC.

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- Jan. 7 Filed statement of points.
- Jan. 7 Filed designation of contents of record on appeal.
- Jan. 7 Filed transcript of proceedings in duplicate.
- Jan. 19 Filed motion for order to transmit original exhibits.
- Jan. 19 Filed and entered order to transmit original exhibits. [42]
-

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 43, inclusive, constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 3460, in which Maggie Mae Teuschman is plaintiff and appellee, and the Pullman Company is defendant and appellant; that the said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant, and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct

transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of proceedings of September 9, 1947, taken and filed in this office in this cause, together with exhibits Nos. 1, 2, 3, 4, 5, 5½, 6, 7, 8, 9, 10, 11, 12 and 13, filed in this cause.

I further certify that the cost of comparing and certifying the within transcript is \$25.50, and the cost of filing the notice of appeal is \$5.00, making a total of \$30.50, and that the said has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 21st day of January, 1948.

[Seal]

LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy. [43]

In the District Court of the United States
for the District of Oregon
Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,
Defendants.

Portland, Oregon, September 9, 1947. A.M.
Before: Honorable Claude McColloch, Judge.

Appearances:

Mr. Thomas H. Ryan, Attorney for Plaintiff.

Mr. Manley B. Strayer (Hart, Spencer, McCul-
loch & Rockwood), of Attorneys for The Pullman
Company.

TRANSCRIPT OF PROCEEDINGS OF TRIAL

The Court: I have read the pleadings and depo-
sitions, so, call our witnesses unless there is some-
thing special to be said.

Mr. Strayer: We started the pre-trial before
Judge Fee but it was not completed. We had gotten
to the point where [1*] we had prepared a pre-trial
order which was satisfactory to both parties. I won-
der if your Honor would care to examine the order?

The Court: Do you want to be heard on it, Mr.
Strayer?

Mr. Strayer: In the pre-trial order there is a

*Page numbering appearing at top of page of original Reporter's
Transcript.

blank in the top paragraph on page 5 covering the amount of special damages. I believe Mr. Ryan has the figures on that now which he can give to your Honor.

Mr. Ryan: \$1400.15.

The Court: The Clerk will put that in. I notice there has been no answer to the amended complaint.

Mr. Strayer: I think we can stipulate that the answer to the original complaint may be deemed an answer to the amended complaint. Wasn't that in the stipulation attached to the amended complaint?

Mr. Ryan: I understood there was a stipulation but I did not understand it was in the record.

The Court: It may be recorded now. Go ahead.

PLAINTIFF'S TESTIMONY

Mr. Ryan: We will call the plaintiff, Mrs. Teutschman.

MAGGIE MAE TEUTSCHMAN

the plaintiff herein, produced as a witness in her own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mrs. Teutschman, you are the plaintiff in this case? A. Yes, sir.

Q. How old are you?

A. I will be sixty-three next month.

Q. What is your occupation?

A. Housewife, right now.

Q. How long have you been so employed?

A. Well, ever since I have been married, now, for the last thirty years.

(Testimony of Maggie Mae Teutschman.)

Q. Did you ever do any kind of work?

A. Yes, I worked in the Porter Building ten years.

Q. When did you quit working there?

A. I quit working there about six or seven years ago.

Q. Why did you quit working there?

A. I got an apartment house. My husband got a steady job and then I got the apartment house so I said he might take care of the apartment house and then he did extra jobs around, extra [3] work.

Q. At the time of this accident, were you taking care of this apartment house, too? A. Yes.

Q. That is where your husband and you reside?

A. Yes.

Q. Your work as housewife included taking care of this apartment house and keeping the place up?

A. Yes.

Q. At the time of the accident, what was the condition of your health?

A. I had perfect health—I have, all my life; never had nothing but perfect health.

Q. You said at one time you had an injury to your right hip?

A. It wasn't exactly the hip, here. It was in the groin. I was hurt with a vacuum cleaner, when a vacuum cleaner struck me.

Q. What was the result of that injury? How did it heal up?

A. It kind of caused an abscess, you know. Then, the doctor lanced the abscess, and then it was one of those kind of abscesses that they claim you can

(Testimony of Maggie Mae Teutschman.)

have a lifetime; they never could completely heal it; they will always have a lot of drainage. It does not affect your health in any way, but it is just something that is a kind of a little—there is a kind of a little drainage all the time but nothing serious at [4] all. People have them for eighty years or something like that.

Q. You have had it then for some time?

A. I had it sixteen years, yes.

Q. Did it cause you to limp?

A. Very little. I think when I did limp was just more of a habit. If I would think what I was doing, I would walk the same as I always did, but the thing was noticeable——

Q. Did it interfere with your work?

A. No; heavens, no.

Q. Did you work at the Porter Building after that accident?

A. Yes, I worked four years on the same job after I was hurt.

Q. Doing janitorial work?

Q. Did that work require you to bend?

A. The same work I was doing when I got hurt.

A. Everything, just the same as I was doing before. I did it four years afterwards.

Q. When did you go down to Los Angeles?

A. I went down to Los Angeles the 23rd day of September.

Q. What was the purpose of visiting Los Angeles?

A. Went to visit my sister. She has been married twenty-seven years and they had made a visit

(Testimony of Maggie Mae Teutschman.)

here, her and her husband was up here in their big car, and I had not had a vacation for the last thirty years and I went more on a vacation and for a visit.

Q. How did you drive down, in that car with them?

A. Yes, rode down there in their car. [5]

Q. How long did you stay down there?

A. Stayed down there until the 9th day of January.

Q. Did you take any treatments down there?

A. I took penicillin shots, because my sister was doctoring with a good doctor that was using these penicillin shots altogether, and my sister was persistent that I should try it, so I tried the penicillin shots.

Q. Had you been taking any treatments before you went down to Los Angeles for this leg?

A. No.

Q. You had not been taking any treatments until you went down to Los Angeles, since just before this accident?

A. No.

Q. It had not been giving any real trouble?

A. No.

Q. How many treatments did you take from this doctor down in Los Angeles?

A. I think there was 140 penicillin shots taken. They have a regular course and when you start in you are supposed to take the course.

Q. Did they clear up your condition?

A. Well, it was—the drainage had already dried up and the doctor said that is the only way you could tell, if it is going to heal up, you know, by the

(Testimony of Maggie Mae Teutschman.)

drainage, so when I left down there I didn't have any drainage in that place at all. [6]

Q. Did this condition of your leg give you any trouble since the happening of the accident?

A. No, didn't suffer with it.

Q. Just an inconvenience?

A. Just an inconvenience.

Q. Was that because of your slight limp?

A. Well, yes, I guess it was.

Q. You kind of favored it?

A. Yes, kind of favored it, you know.

Q. Favored it more when you were tired?

A. Well, I practically did not limp to amount to anything. The limping did not amount to much.

Q. Mrs. Teutschman, you tell the Court, now, just what you did the day you got the ticket to go to Portland.

A. Well, my sister was sick and couldn't go with me. I went alone and when I went up to the office it was pretty near closing time and, so, I told the woman in there that I wanted a ticket with a lower berth. She didn't seem to understand. She seemed to be a new woman in there. She would go around asking first one and another and, finally, she got me fitted up——

Q. Talk up. The Judge can't hear you.

A. I insisted on a lower berth and, as far as I know, she had assigned me to a lower berth, so I took my ticket and went—just put it in my hand-satchel, so I went back and went to bed because I had to get up early the next morning to catch the

(Testimony of Maggie Mae Teutschman.)

[7] train at 8 o'clock; in fact, paid no attention to the ticket. My sister was sorry she did not pay any attention to it.

Q. You did not look at the ticket after you got it?

A. No, I didn't look at the ticket after I got it.

Q. As I understood you, you bought a ticket from Los Angeles to Portland, but you only bought a Pullman ticket for that evening, isn't that the way you did it?

A. No, I think I bought it straight through to Portland.

Q. A Pullman straight through to Portland?

A. Yes.

Q. Did you have to change trains en route?

A. Yes, changed trains. That is as far as that train went; it was the end of the destination of that train; that is as far as it went; everybody, all passengers had to get off the train.

Q. You bought a Pullman ticket all the way through to Portland? But you had to change cars at this station? A. Yes.

Q. You do not know what the name of the station is? A. No.

Q. Tell the Court what you did when you changed cars?

A. When I changed cars, they all went over to the depot and stayed there and waited until the train that was supposed to take us came.

Q. That was what time in the evening?

A. Well, I don't know; couldn't say what time. As near as I [8] can remember, it was around about

(Testimony of Maggie Mae Teutschman.)

9 o'clock or something like that, I think. I didn't pay any attention.

Q. 9 o'clock when you got off the train?

A. Yes.

Q. How long did you wait there at the station?

A. Well, it was an hour and a half or close on to two hours, as I remember it. It was quite a little wait; I know we had to stay there and wait.

Q. Then you got on the train? A. Yes.

Q. The train that you had the accident on?

A. Yes.

Q. How did you happen to get on that train?

A. Well, they said that was the train we were supposed to get on. All the other passengers got off the other train and got on.

Q. Who said that?

A. Well, when I got off the train, why, the Pullman—the man on the train he said, "Here the train comes."

Q. That was the Pullman man on the other train? A. Yes.

Q. He told you to take this train?

A. Yes, supposed to take this next train, the first train that came, so everybody went out there together to get on that train. I supposed it was the train we were supposed to get on. [9]

Q. Tell the Court just what happened when you started to get on that train.

A. I went down to the front end of the train and the conductor looked at me and said, "Here," he said, "you have to go back to the back end to where

(Testimony of Maggie Mae Teutschman.)

that conductor is up there," so I walked back to where the conductor was up there and there was a porter standing down there to help me up but the conductor said—the conductor wasn't going to let me on the train, so I said, "I don't know why." I said, "I have got my ticket and everything," and he said to the porter, "Let her on there, then," so the porter helped me up onto the train.

Q. Then what happened?

A. Then I went in there, then. The conductor came in, and they only had an upper berth for me. I told the conductor I didn't want no upper berth; I was supposed to have a lower berth, and my sister had told me not to take an upper berth, and I said, "I ain't supposed to go up in that upper berth," and he said, "Well, that is the only thing there is." So, it wasn't made up and the porter, he was making it up and I stood there and talked with the conductor. I didn't want to go up in that berth, so then the conductor—the porter got the bed made up and he said, "All right," so the conductor said, "You go over there and the porter will take care of you," so I went over, and he had a little ladder up there and helped me up into the bed, and then he went. I never seen anything more of him. [10]

Q. Why didn't you want to get up in the upper berth?

A. Because my sister's husband is a railroad man and they have rode on trains lots. I don't know why, but she always insisted on having a lower berth.

(Testimony of Maggie Mae Teutschman.)

Q. Had you ever ridden on a train before?

A. I never had seen an inside of a sleeper before.

Q. You had never been in a Pullman or sleeper before? A. Never had seen one, no.

Q. Did you explain that to the porter?

A. Yes, I told him, "This is all Greek to me." I said to the porter I never had any idea in the world how this is in here, this is the first time I was ever in one of these places, and I still insisted to him I did not want to get up on that ladder into that high berth.

Q. Did he say anything to you?

A. He never spoke to me.

Q. Never said a word to you?

A. He never spoke to me.

Q. Was the conductor there when you got into the berth?

A. No, I didn't see the conductor.

Q. Did anybody tell you anything about the use of the upper berth? A. Not one word.

Q. Was the berth made up when you got on the train?

A. No, it was not. He made it up while I was standing there. [11]

Q. Did he pull the thing down, or was it already down? A. What?

Q. You know how an upper berth folds up?

A. I don't know a thing about it. I don't even—I don't know anything about that upper berth. I don't know whether they fold up or what they do.

(Testimony of Maggie Mae Teutschman.)

Q. Do you know if the berth was up when you got in the car? Did you notice that?

A. No. I don't know if it was folded or not.

Q. You said something in your deposition about somebody being in the berth?

A. Yes. There was a man, I am sure, come down out of that berth when I was standing there. He came walking right straight up and walked past us and went on out.

Q. If a man got out of the berth, it would have had to have been down?

A. I suppose it would. I don't know. I don't know how those berths worked. I couldn't say, because I don't understand them things.

Q. You know he made it up?

A. Yes, I know, because I had to stand there at his back and wait until he made it up.

Q. Was there quite a bit of confusion? You were pretty mad, weren't you?

A. Yes, I was mad, and I was scared to get away up in that high place.

Q. You objected to both the porter and the conductor? A. I did. I told them——

Q. The porter went ahead and made up the berth while you were talking? A. Yes.

Q. What did you do after you got up in the berth?

A. Well, I just slipped off my slippers and my hat. That is all I could do and I just laid down with all my clothes and everything on; just took off my slippers and hat and laid down.

(Testimony of Maggie Mae Teutschman.)

Q. Were there any curtains?

A. I never seen no curtains.

Q. Did the porter pull any curtains?

A. He didn't.

Q. Did he say anything to you about them?

A. He never mentioned a thing, never one time.

Q. He walked away, did he?

A. He didn't speak to me; just put up the ladder and, when I got up in the berth, he walked away. I never saw him again until two hours or so later.

Q. There was no cloth or webwork there?

A. There was nothing. I seen the rest of them had curtains and I wondered then where in the world all the rest of them got their curtains and how come I couldn't get any. I noticed the rest of them had them but I didn't have any. [13]

Q. How long was it before you went to sleep?

A. I couldn't say just exactly how long but I don't think very long. I fell asleep and—I don't know; I probably slept an hour and a half, something like that; couldn't say how long. When I woke up, I was thirsty. I had eaten a big dinner and my sister had fixed me a big lunch. I woke up and I was thirsty and wanted a drink.

I didn't know how I was supposed to get a drink, so I saw a little bell on the side of the wall and I pushed that little bell and then the porter came and I asked him if I couldn't have a drink of water and he went back there and he fetched me a little cup with water, and he just handed it to me and went.

(Testimony of Maggie Mae Teutschman.)

He never spoke to me and I didn't speak to him. Had a drink of water and laid back again and went to sleep.

Q. Were the curtains drawn when the porter came there? A. No.

Q. You were pretty tired out?

A. Yes— Well, I was tired. I had been on the other train since 8 o'clock.

Q. You had not taken your clothes off in that time?

A. No. There was nothing there to hide me.

Q. Then what happened?

A. I laid back there, and I was flat on my back, just like laying on this table. I was laying on my back. I just woke up and when I woke up I kind of raised my head and the next [14] thing I hit the floor.

Q. Was there anything there to stop you from rolling out of the berth?

A. Absolutely nothing, no more than this table.

Q. You were not trying to get out of the berth or anything?

A. No, I didn't even raise up. I just woke up and, as I went to raise my head up, the next thing I knew I hit the floor.

Q. Tell what happened after you hit the floor?

A. After I hit the floor, I don't know whether I was knocked out or not; couldn't say about that but, anyway, I was laying there, trying to raise my shoulders up, trying to get up, and the conductor came along and he had his flashlight in his hand and he said, "What did you do? Fall out of bed?"

(Testimony of Maggie Mae Teutschman.)

I said, "Yes, I fell out of bed," so he came over to me and knelt down by me. He was starting to raise me up by the shoulders and just about then the porter came running up to him and the porter was starting to try to lift me up, and I passed out. I don't know when they carried me out, then. I didn't know anything more.

The next time I came to any at all was when they was taking me off the train at Redding. I just barely realized that they was moving me around and taking me down some steps. I realized that and I heard a man say, "We will just put her in here." I realized I was riding in something, but wasn't enough out to know what was going on. I realized when the rig stopped; [15] I heard a lady say, "Well, I will rush back quick," and I guess they held the train while the lady went with me, and then I passed out again. I didn't know anything——

Q. You passed out a second time? A. Yes.

Q. You woke up in a hospital, did you?

A. I woke up when they was going to the X-ray place.

Q. That was the first time you knew you had a broken leg?

A. Yes. I began to holler. I asked them why they had hurt my leg and the nurse said, "Don't you know you have got a broken leg?" And I said, "No." And she said, "You have."

Q. Who treated you in Redding?

A. Didn't anybody.

(Testimony of Maggie Mae Teutschman.)

Q. You had a doctor down there?

A. I was supposed to have one but he didn't do nothing. All he done was give me hypos. He never touched me.

Q. How long were you in the hospital at Redding?

A. Was there four days.

Q. And then you came up to Portland?

A. Yes.

Q. Your husband came down and took you up to Portland?

A. Yes, he come down. He thought that he was going to take me to a railroad hospital in Los Angeles. They had sent him word here they was moving me and taking me to San Francisco, so he bought a ticket straight through to San Francisco, and [16] then the next day, my sister—I told her he was coming and she said, "Heavens, I have got to meet that train and head him off," so she went down to the train and headed him off.

Q. Then he brought you back up to Portland?

A. Yes.

Q. Who treated you in Portland?

A. Dr. Thatcher.

Q. That is Dr. H. Thatcher?

A. I don't know what his first name is.

Q. He is with Dr. Blair, is he not?

A. Yes.

Q. Tell the Court what Dr. Thatcher did for you.

A. They got me in the hospital about 7 o'clock in the evening——

(Testimony of Maggie Mae Teutschman.)

Q. Don't go into too much detail.

A. The next morning, Dr. Thatcher—they took me up and put me out and Dr. Thatcher set my leg. He had to peg my leg—he drove a peg clear through the bone of my leg, clear through the bone.

Q. Down by your knee?

A. Between the knee and ankle. You can see the scar on both sides where it went in. He had to drive a peg clear through there, and then they had to put me up on a kind of a little ladder, my leg; then they had to put a frame up of some kind with a heavy weight at the end here.

Q. They had your leg in traction?

A. Yes, about six weeks that they had weights pulling on my leg.

Q. I thought you told me yesterday it was less than eight weeks?

A. No, that I was in the hospital.

Q. You were in traction, then, for six weeks?

A. Yes.

Q. And were in the hospital for three days less than eight weeks?

A. They took me down from there and put me in a whole body cast.

Q. How long were you in that body cast?

A. I was in there two months.

Q. A part of that time you were at home?

A. Yes.

Q. Did you have a nurse while you were at home?

(Testimony of Maggie Mae Teutschman.)

A. I had a practical nurse, yes, because there had to be somebody with me every minute of the day and night.

Q. After you got out of the body cast, how long was it before you could get up and around?

A. Oh, it was—I don't know just how long, but it was a long time. It has been about a year that I went around on one crutch; couldn't hardly get around at all or get any rest or anything, and they got me a wheelchair and I went around in the house on a wheelchair for a long time.

Q. For over a year, then, you had to go around on crutches or [18] in a wheelchair?

A. Oh, yes.

Q. How long has it been since you were able to get around on one crutch?

A. Been going with one about three months.

Q. Does it seem to get any better?

A. No, it don't. I walk a little bit on my leg and then it gives way and I am right back—worse than ever. Don't seem to get any strength in that leg.

Q. Do you have any trouble dressing?

A. Yes. I can't dress myself. I can't bend my leg. My husband has to wake me up about 5 o'clock in the morning, before he goes to work, and put on my stockings and my underwear and then—or else I have to ask someone over to do it, or else go without any. It is impossible. I can't put them on. I can't take a bath by myself. I can't do nothing. I am in bed more time than I am up. I go around

(Testimony of Maggie Mae Teutschman.)

trying to do a little work and then lay down. I get up a while and then lay down because I can't be on my leg very long.

Q. You don't think you are getting much better?

A. No, I can't see that I am.

Q. What other injuries did you sustain than the injury to your knee?

A. The bone in my foot was broken. I suffer with that about as much as in my knee, and then the place where he pegged it, I suffer terrible with that. My whole leg, clear down where he pegged it to my foot pains me terrible.

Q. What about any injuries to the other parts of your body?

A. My back right here is hurt. I don't know——

Q. When you say "right here" tell where.

A. Well, it is right on the ribs. I don't know if it is the ribs. Dr. Thatcher, he can tell you. I told him one day, and he said, "Well, I just wouldn't worry about it" so I guess there can't be nothing done about it. I sure do suffer with it.

Q. Do you have any other injuries?

A. Yes, my neck is hurting. I just suffer all the time, steady, day and night from pain in my neck and head; just a dull hurt in my head all the time.

Q. Does your head ache?

A. Yes. Sometimes—my whole body just aches, not only just the pain in my neck and head.

Q. Ever take pills or anything for that condition?

(Testimony of Maggie Mae Teutschman.)

A. No, don't take nothing. Dr. Thatcher told me to take some pills when it got so I couldn't stand it any other way, and, once in a while, I take aspirin, but that is all.

Q. How is this pain in your back? About the same?

A. Yes, it pains me all the time; just suffer with it all the time.

Q. How about your headaches? Are they getting less severe?

A. No, just a steady hurt, aching in my head all the time, and my neck, it seems to move different places, like on a pivot; it just moves around and I haven't much control of it until it seems to get back in place again.

Q. Do you know how much your doctor bills amounted to? Dr. Thatcher's bill?

A. Yes, I have it wrote down.

Q. You have that all written down?

A. Yes.

Q. Do you have that with you?

A. Yes, I think I have it with me. I wrote them off the bills.

Mr. Strayer: Are these bills that have been paid?

Mr. Ryan: I don't know whether have all been paid or not.

A. No, they are not.

Q. I will show you Plaintiff's Identification No. 1.

A. This is Dr. Thatcher's.

(Testimony of Maggie Mae Teutschman.)

Q. Yes, that is it.

A. That is it, four hundred. That is right. That is the bill he sent me.

Q. That is for services rendered as a result of this accident? A. Yes.

Q. I will show you Plaintiff's Identification No. 2, this bill of St. Vincent's Hospital. Is that the hospital bill, St. Vincent's Hospital? A. Yes.

Q. \$518? A. Yes.

Q. That is your final statement? A. \$518.

Q. You got several bills from St. Vincent's Hospital? A. Yes.

Q. The hospital bill is for all the time you were there in connection with these injuries?

A. Yes.

Q. That is \$518? A. Yes.

Q. You expended certain moneys for ambulances, did you not?

A. Yes. When I was in the body cast at home, there was a sharp corner right on my hip which just dug right into my hip and I was so sore with it that Dr. Thatcher ordered him to get a taxicab and take me up to the hospital and he just took me many times to the hospital and have the doctor try to skin some of that off.

Q. Do you know how much was spent for those bills?

A. \$48 for the ambulance. We had to pay the ambulance to take me over.

Q. \$48 for the ambulances, altogether?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. I understood it was \$70 for ambulances?

A. Well, it was. We had to pay the ambulance to take me there.

Q. Altogether it was \$70?

A. Yes, altogether.

Q. You do not have receipts for a lot of those bills?

A. No.

Q. I show you what receipts we have here (Plaintiff's Identification No. 3). Those are the bills you paid, are they not?

A. Yes, they are. Buck Ambulance Company, that is the one we always had. That is my signature on there.

Q. You did not get any receipts from the taxicabs?

A. No. Spent a lot of money for taxis because up until the last month or so I had to have a taxi to get wherever I went. I couldn't ride the bus.

Q. What was your hospital bill at Redding? What was the hospital bill at the Redding Hospital? I can show you this (Plaintiff's Identification No. 4).

A. Yes. That was \$58.

Q. \$58?

A. Yes.

Q. You also got a wheelchair, did you not?

A. Yes. He tried to get me so I could go around in the house and go out on the front porch in a wheelchair.

Q. Is this the bill for the wheelchair (Plaintiff's Identification No. 5)?

A. Yes, that is it.

Q. How much did you pay the doctor at Redding?

(Testimony of Maggie Mae Teutschman.)

A. Paid him \$10, but that was not the railroad doctor. [23]

Q. You paid your own doctor \$10?

A. Yes. I paid him to fix my leg up so I could travel with it from Redding to Portland.

Q. You have no receipt for that?

A. No. He didn't give me no receipt.

Q. How much did you pay your nurse?

A. \$200 altogether.

Q. You do not have a receipt for that?

A. Golly, I have got one at home but I didn't bring it with me.

Q. How long did she work there?

A. She worked there for over two months.

Q. And you paid her \$200? A. Yes.

Q. In addition to that, you spent some money for medicines? A. Yes.

Q. Do you know how much that was?

A. No. We had bills for all of those things—it is \$14.15.

Q. \$14.15? \$14.15 for medicines?

A. Yes.

Q. You spent \$10 for fixing a bell so you could ring a bell and get a nurse?

A. Yes, we had to have a special fixture on there so I could get her in a minute.

Q. Your husband went down to Redding to bring you home? A. Yes. [24]

Q. How much did he spend going down and your fare home?

(Testimony of Maggie Mae Teutschman.)

Mr. Strayer: Objected to as immaterial, your Honor.

The Court: Sustained.

Mr. Ryan: Is there any objection to the reasonableness of the charges?

Mr. Strayer: No, I think not.

Mr. Ryan: Is there any objection to the introduction of these exhibits in evidence?

Mr. Strayer: No.

The Court: They may be received.

(Statement of Dr. H. Thatcher for professional service, \$400, thereupon received in evidence and marked Plaintiff's Exhibit No. 1.

(Statement of St. Vincent's Hospital, dated 10/16/46, in amount \$518, account Mrs. Albert Teutschman, thereupon received in evidence and marked Plaintiff's Exhibit No. 2.

(Group of ambulance bills thereupon received in evidence and marked Plaintiff's Exhibit No. 3.

(Statement of Memorial Hospital, Redding, California, in amount \$58, thereupon received in evidence and marked Plaintiff's Exhibit No. 4.

(Statement of Abbey Rents, wheelchair, in amount \$5.50, thereupon received in evidence and marked Plaintiff's Exhibit No. 5.) [25]

Mr. Ryan: You may cross-examine.

(Testimony of Maggie Mae Teutschman.)

Cross-Examination

By Mr. Strayer:

Q. How long ago was it you originally hurt your right leg?

A. It has been about sixteen years ago.

Q. That was when a vacuum cleaner fell against it? A. Yes.

Q. Were you working at that time?

A. Yes, I was.

Mr. Ryan: If the Court please, Dr. Thatcher is here and, if there is no objection, we would like to put him on at this time.

Mr. Strayer: Certainly.

(Witness temporarily excused.)

DR. H. THATCHER

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Dr. Thatcher, you are a licensed physician and surgeon in the State of Oregon, are you not?

A. Yes.

Mr. Strayer: We will admit the doctor's qualifications.

Q. (By Mr. Ryan): Are you acquainted with Mrs. Teutschman, the plaintiff here? A. Yes.

(Testimony of Dr. H. Thatcher.)

Q. Will you give a record of your acquaintance-ship with her case?

A. This lady came in to St. Vincent's Hospital, in January some time for treatment for a fall. She had a fracture of the right femur at the junction of the upper and middle thirds. She came in to St. Vincent's as a staff case. I mean by that that she was attended by the resident, the surgical resident, and at that time the surgical resident was Dr. Henderson. He took care of this case but it was supervised by Dr. Pasquesi and myself. Dr. Pasquesi was working for me at that time.

The Court: Did you do the surgery?

A. No, sir, I didn't.

Q. Were you present when it was done? [27]

A. I can't say that I was.

Q. Was your assistant present? A. Yes.

Q. Did he do it?

A. Well, yes, he supervised it.

Q. How do you spell his name?

A. P-a-s-q-u-e-s-i. After the fragments, the upper and lower fragments, were lined up, gotten into as straight a line as we could get them, and there was enough callus formed so that the withdrawal of the pin did not make the fragments slip, she was put into a spica cast.

Q. (By Mr. Ryan): Did she receive treatment from you personally after that?

A. I saw Mrs. Teutschman when I took her cast off and reviewed her X-ray pictures and took her cast off and I believe after that she came to my office as my patient.

(Testimony of Dr. H. Thatcher.)

Q. Was there any complaint made by Mrs. Teutschman other than the injury to her leg?

A. Yes, she complained of pain in her neck; complained of pains in her neck at the right side which she said affected the control and movement of the head, and said that these pains were worse at night. She had not complained of those in the hospital because I looked over the record——

The Court: She just said she had pain in her back when she talked to you, or do you have any recollection of that? [28]

A. No, sir. Yes—Well, she had not complained of it. She complained of those things after she came to my office. X-ray pictures were taken of her cervical vertebrae and her back, lumbar vertebrae, and at that time there was no bony abnormality seen in these X-ray pictures.

Q. (By Mr. Ryan): Were any X-rays taken of her foot? A. I don't recall it.

The Court: He said the pictures of her back and her neck showed no bony abnormality.

Mr. Ryan: I wondered about the foot.

The Court: You think maybe there is a picture there?

Mr. Ryan: Yes. He said he did not recall whether he had one taken or not.

The Court: Ask her.

The Plaintiff: No, I don't think he took one of the foot. He never X-rayed the foot.

(Testimony of Dr. H. Thatcher.)

The Court: Suppose you look over your notes. There is no hurry about it. Look over your notes and see if there is any record about her foot, either before or after the hospital treatments.

A. No, I haven't any record of her complaint about her foot.

The Plaintiff. I know one time when I was down to the office I told him about it and I said that bone was broken, with the pain I was suffering, and you said it was.

A. I do not recollect it at all. [29]

The Plaintiff: Yes.

Q. (By Mr. Ryan): Was there any evidence of osteomyelitis?

A. I would have to look this over. The record shows that there was some osteomyelitis, some previous injury to the hip, which she reported as a previous injury.

The Court: Mr. Strayer, does the defendant contend that there is a relation between this osteomyelitis and the fracture of the leg?

Mr. Strayer: I think only in the sense, your Honor, that it would have weakened the bone so it would have made it more easily broken.

The Court: I don't see what difference that would make.

Mr. Strayer: It does not, except as bearing on the manner in which the accident happened.

The Court: Do you expect to have medical testimony?

Mr. Strayer: No, your Honor.

(Testimony of Dr. H. Thatcher.)

The Court: Just take your time, Doctor. You will be the only man in the case, the only medical man in the case. We cannot expect you to remember all these things.

A. This is not the way we take care of private cases, as a rule, and it makes it a little difficult to remember. These staff cases are taken care of by the staff and they are only overseen by them.

I do not see any evidence of any osteomyelitis in this picture, these pictures here. [30]

The Court: Her testimony is that, while she was employed doing janitor work in an office building some years ago, she was struck in the groin with a vacuum sweeper, according to her deposition which I read last night, and she said that never healed up altogether. Did that Redding doctor speak of osteomyelitis?

Mr. Strayer: Yes, in the Redding doctor's deposition, he testified there were two draining fistulas in the upper femur.

The Court: Where?

Mr. Strayer: The upper third of the right femur.

The Court: That is in his deposition which you expect to put in evidence?

Mr. Strayer: Yes.

The Plaintiff That is way up here. My break is way down here, below the knee.

A. I do not see any evidence in these pictures. These are not very complete pictures. There must have been other pictures. There must have been other pictures taken.

(Testimony of Dr. H. Thatcher.)

Q. (By Mr. Ryan): If this condition did exist in the upper part of the leg, or hip, would that have a tendency to affect a fracture in the place where Mrs. Teutschman received it?

A. If there was osteomyelitis of the femur at some portion of the femur, you would expect a fracture would occur at the site of the osteomyelitis. There is no fracture, as I recall it, at the site of the osteomyelitis. It does not weaken the rest of the bone. It does not weaken the lower end of the bone.

The Court: Here is what the Redding doctor testified to in his deposition when it was taken down there. I see the point now.

“Q. Can you state what the X-rays did show?

“A. Showed a spiral fracture of the right femur, also an osteomyelitis of the left femur with extra bony decalcification and decomposition.

“Q. Did you discuss the osteomyelitis with the patient, Mrs. Teutschman, concerning the history of it? A. Yes.

“Q. Did she give you any statement as to that condition?

“A. I don't recall very clearly but she had been treated for it before, she told me, but I don't recall where she had been treated.

(Testimony of Dr. H. Thatcher.)

“Q. Was there any evidence of the osteomyelitic condition on the surface of the body?

“A. Yes, there were two draining fistulas, one near the fold of the buttocks and one on the anterior surface, as I recall it.”

Mr. Strayer: I think he used the word “left” femur in error.

The Court: That is all we know about osteomyelitis. [32] Go ahead with your examination.

Q. (By Mr. Ryan): What do you think will be the result of this leg condition? Will it be stationary or will it get better as times goes on?

A. I don't know the range of motion of her knee joint. Usually the range of motion increases. As a rule, these cases get better as time goes on, in most fractures, because when we encase them in a cast there is a certain amount of limitation in the joint. This usually clears up and takes a long time to do it.

The Court: She says she was in a body cast for—how long?

Mr. Ryan: Two months.

A. That is right.

The Court: She says she was in the hospital for—how long?

Mr. Ryan: She was in the hospital, I believe, eight weeks.

A. That is right.

The Court: Then she was at home, under the care of a nurse, for, how long?

Mr. Ryan: Two months.

(Testimony of Dr. H. Thatcher.)

The Court: Yes. She says she has not been able—she is not able to put on her stockings or underclothes or take them off by herself, and that is, how long ago?

Mr. Ryan: She has not been able to do that right up to now.

The Court: When was the injury?

Mr. Ryan: The injury was the 9th of January, 1946.

The Court: That is what I want to know, Doctor. That [33] is going on two years now.

A. It should be stationary by this time.

Q. (By Mr. Ryan): It should be stationary by this time? A. Yes.

The Court: She was in a wheelchair for a while, too.

Q. (By Mr. Ryan): This condition of the neck, would it necessarily show upon X-rays if a person received a blow or jar on the neck that resulted in headaches and pain on motion of the neck? Would it necessarily show up in X-rays?

A. Yes, it would, if it lasted that long. It would have to. It is not possible to have a muscle injury of the neck and have symptoms continue this length of time.

Q. Would the same thing be true of the back?

A. To a less degree. Your back has to carry more weight than your neck does. Your neck only carries the weight of your head, while your back carries the weight of your trunk, and, as a rule, back pains are slower in getting well but, if there

(Testimony of Dr. H. Thatcher.)

is no bony abnormality in the back, then I would say eventually, with supportive treatment, I mean with a corset, and lack of strenuous activity, the back should absolutely get well, if there is no bony abnormality, but the muscle injuries do not last that length of time, as a rule.

Mr. Ryan: That is all. [34]

Cross-Examination

By Mr. Strayer:

Q. I am not sure I understand what a surgical resident is.

A. Well, hospitals—May I just divert? Hospitals are coming under the control of the American College of Surgeons. To do that, they have to have certain equipment. The interns have to go through teaching—they must be taught by the doctors who are the heads of the different staffs. I happened to be the head of the orthopedic staff at that time. In the same way, Dr. Joyce was the head of the surgical staff, and so on. These interns must have a certain amount of instruction, supervised instruction, to come under the American College of Surgeons specifications, to have “A” class.

So, when these cases come in, they either come in to a certain doctor or they come in as, we call them, staff cases; that is, they are attended by the resident; that is, the boy that has spent his internship and then takes an extra year in a certain branch of work, and this boy took an extra year

(Testimony of Dr. H. Thatcher.)

in surgery so, because this was admitted as a staff case, he went along and was supervised on everything that was done. We usually assist those young men and in that way make it a teaching staff rather than our doing it.

Q. That would indicate she came there, not as your patient but the patient of any particular doctor who came——

A. Well, she came as a staff case, because Dr. Henderson had [35] charge and was the staff doctor at that time.

Q. When you first had contact with the case, were you consulted about anything other than the injury to her leg? A. No, not at first.

Q. Can you recall when you were first consulted with regard to anything else?

A. Well, I don't recall whether—I was over Dr. Henderson when he put this pin in, but I don't recall if I passed judgment on whether or not the cast should come off and whether or not the leg was solid enough to take the cast off at the time.

Q. When did she first make a complaint about pain in her neck and back?

A. I don't recall, but it was in my office.

Q. That would have been at least two months?

A. She may have made those to Dr. Pasquesi but not to me.

Q. It was some months after you first saw her in the hospital? A. Yes.

Q. When she made those complaints, did you take other X-rays?

(Testimony of Dr. H. Thatcher.)

A. Took X-rays of her back and X-rays of her neck, which included the lower part of the skull and the cervical vertebrae.

Q. How long ago were those X-rays taken?

A. I don't recall.

Q. And you were unable to find anything to disclose the source of these pains in the neck and back?

A. That is right. [36]

Q. There is some talk about a broken bone in the foot. As I understand you, if I understand you correctly, you have no recollection of a complaint being made about the foot?

A. That is right.

Q. You would normally have had an X-ray taken if there were a complaint about pain or injury to the foot?

A. That is right.

Q. Did Mrs. Teutschman give you any history of how she received the injury?

A. No, I didn't get any history.

Q. You have no information then as to the manner in which she broke her leg?

A. No, none at all.

Q. Do you recall anything at all in regard to evidence of osteomyelitis of her leg?

A. No, I don't recall it. I vaguely remember something was said of a prior fracture, evidence of a subtrochanteric fracture on one side, a previous injury, but if a person had osteomyelitis or a draining sinus, then a window or hole would have to be cut out of her body cast in order to treat those

(Testimony of Dr. H. Thatcher.)

draining wounds, and I believe that was not done.

Q. The logical assumption, then, would be that if there had been a draining fistula there, it had dried up by that time? A. Yes.

Q. What is osteomyelitis, Doctor? [37]

A. Osteomyelitis is an infection of the bone itself. It usually affects the entire bone.

Q. In what way does it affect the bone? Does the bone decay?

A. The bone decays. In osteomyelitis there is a decaying process of the bone. It is affected by various types of bacteria. While it decays, it builds up—we call the decayed portion the sequestrum. While a portion of the bone is dying, due to the effect of this bacterial action, it also grows—while the decaying process is going on, a growing process is going on, a bone called the involucrum, so it is possible for a bone to be almost entirely replaced by the so-called involucrum, or new growth of bone which goes on at the same time as the sloughing of the bone itself.

Q. Does that cause the patient any pain?

A. In acute osteomyelitis, it causes very severe pain but in chronic osteomyelitis, as a rule, pain is not present. The worst feature about chronic osteomyelitis is that continual drainage. The bone will drain and drain and drain. Then, suddenly it will get rid of small spicules of dead bone and the sinus or the opening will close up and then in a few years this all starts over again, irrespective of accident or anything else.

(Testimony of Dr. H. Thatcher.)

Q. Mrs. Teutschman testified about this accident about twelve years before, I think it was; she had this draining place on her leg during all these years, and until she went down to [38] Los Angeles in the fall of 1945, and she said then she had approximately 140 injections of penicillin down there, which caused these sores to dry up. Would that be consistent with the presence and treatment of osteomyelitis?

A. Acute osteomyelitis is a very terrible thing and occurs largely in younger people. It is combatted beautifully with the use of penicillin. We have stopped many cases of acute osteomyelitis by the use of injections of penicillin.

However, when osteomyelitis becomes chronic, it is absolutely like pouring penicillin in the river. It has no effect on it. It is considered by eminent physicians and surgeons and orthopedists that it has no effect on chronic osteomyelitis at all.

Q. Would that history I have just related to you indicate the presence of chronic osteomyelitis?

A. Well, you mean from giving penicillin?

Q. No, I mean the fact that following this injury she had these draining sores on her hip for a period of twelve years?

A. I don't know. I would just have to guess.

Q. It could have been something else?

A. Oh, yes.

Q. Have you ever examined her for the purpose of determining whether she had chronic osteomyelitis? A. No.

(Testimony of Dr. H. Thatcher.)

Q. It is possible and consistent with the examination that you [39] have made that she has been suffering from osteomyelitis?

A. Well, yes, I imagine she could have.

Q. Before this last accident, Mrs. Teutschman walked with somewhat of a limp and, I believe she testified in her deposition, one leg was slightly shorter than the other. Would that condition result from osteomyelitis over a long period of time?

A. Yes, because it will affect the growth centers of bone, causing shortening.

Q. Doctor, Mrs. Teutschman has testified also that she has great difficulty in dressing in the morning, putting on her shoes and stockings; she states that she even has to have help in doing all that.

From your examination of her, have you found anything to explain that difficulty which she has?

A. No, sir.

Q. Have you found any evidence of any limitation of motion of the knee?

A. I don't recall that. As I said before, I don't remember her limitations of motion in her foot or knee—knee or hip.

Q. Had she complained to you of having that difficulty?

A. Well, I don't recall. She may have and I don't recall it.

Q. How often have you seen her since she was a patient in the hospital?

A. I wouldn't be able to say. I would say probably once a month or maybe sometimes oftener. [40]

(Testimony of Dr. H. Thatcher.)

Q. That has been at your office?

A. At my office or at the hospital on Tuesday mornings when we changed casts.

Mr. Strayer: I think that is all.

Redirect Examination

By Mr. Ryan:

Q. You say osteomyelitis affects the whole bone?

A. I say it may affect the whole bone.

Q. Would that condition be apparent from an examination of these X-rays, if it existed at the place of fracture? There is no evidence of that, is there, Doctor?

A. No, I see no evidence.

Mr. Ryan: That is all.

Recross-Examination

By Mr. Strayer:

Q. I think the doctor in Redding testified that the point of the osteomyelitis was above the fracture. When he was asked by Mr. Pelay whether they were adjacent or co-adjacent with the fracture, he said they were not co-adjacent; they were adjacent in the sense they were quite near together. Does that have any effect on your opinion?

A. No, not in the slightest. I understand from these pictures—nowhere near that fracture; not within six inches or seven inches, so I wouldn't say osteomyelitis has not affected that femur, in these picture, and I wouldn't say it had anything [41] to do with the fracture, as far as anything I can see.

Mr. Strayer: That is all.

(Witness excused.)

MAGGIE MAY TEUTSCHMAN

the plaintiff herein, having been previously duly sworn, resumed the stand and was examined and testified as follows:

Cross-Examination
(Continued)

By Mr. Strayer:

Q. Mrs. Teutschman, going back to the time when you first received this injury, you were treated by a doctor here in Portland, weren't you?

A. Yes.

Q. Dr. Harroun——

The Court: Which injury?

Mr. Strayer: I mean the first injury she received about twelve years ago.

A. Sixteen years ago. I had that injury at the building.

Q. (By Mr. Strayer): When did these sores on your hip develop?

A. Well, it was about six months after the vacuum cleaner handle hit me. There was a knot come and Dr. Harroun lanced it. Then he called it a sub-flesh abscess. He still says today that is what it is. [42]

Q. One of these, or two of them? A. One.

Q. Just one? A. Just one of them.

Q. That is all you ever had, just the one?

A. Yes.

Q. Did that drain rather continuously?

A. Well, yes. Dr. Harroun told me, he said they have them and you can have it a lifetime.

(Testimony of Maggie Mae Teutschman.)

Q. That is what he told you when he was treating you for it? A. Yes.

Q. When did he stop treating you?

A. Oh, I haven't seen Dr. Harroun for fourteen or fifteen years, I don't think.

Q. At that time did you walk with a limp?

A. Very little; kind of favored that——

Q. But before you had that injury, did you walk with a limp? A. Oh, no.

Q. I think you said in your deposition, when your deposition was taken, that one leg was shorter than the other?

A. Well, it could have been, but it did not make me limp enough to hardly notice it. I could walk— If I would think about what I was doing, I would walk just the same as I ever did. You can get in the habit of limping along.

Q. After that first injury, sixteen years ago, was that getting [43] a little worse? A. No.

Q. Seemed to be about the same?

A. Yes; my leg was just as strong as it was before it was hurt. I could work and do the same as I ever did. I worked in the building four years after that. I never did quit working with it.

Q. Then, after you quit working in the building, you continued working in your apartment house, you and your husband?

A. No, he didn't help me. I run the apartment house by myself. I did all the work of laundering for the apartment house and took in washing and ironing besides. I used to do extra work.

(Testimony of Maggie Mae Teutschman.)

Q. Then, when you went down to California, your sister and her husband wanted you to come down and stay with them for a while?

A. Yes. I went down to visit them.

Q. Did you have any intention of taking treatments when you went down there?

A. No, I didn't.

Q. How did it happen you took these penicillin treatments?

A. My sister was treating with a doctor down there. She had heard so much about penicillin shots for things like that; she had heard rumors about treatments with penicillin and they had such wonderful success; she talked me into trying it anyway, which I did.

Q. As you remember, you had 140 injections of penicillin? [44] A. Yes.

Q. That must have been over a period of several months?

A. Yes, it was. I was taking three a day for five days and then resting two days and then take five days more at three a day.

Q. Had you just completed those shots when you started back to Portland?

A. Well, it had been about two weeks or more since I had taken any.

Q. I think your testimony in your deposition was that this running sore was dried up by the time you started back? A. It seemed dried up.

(Testimony of Maggie Mae Teutschman.)

Q. When you went down to California, this abscess was still running?

A. Yes, just a little, just one place.

Q. Is it still dried up?

A. It is not now, since I got hurt.

Q. It has been running ever since you got hurt?

A. Yes.

Q. Have you taken any treatments for that condition? A. No, I have not.

Q. Did they put any applications on when you were in the hospital?

A. No, they couldn't. I had to hang up there, lay flat on my back, and couldn't move for six weeks, and they couldn't [45] do a thing, as long as I had it hanging up there in traction, but I complained all the time to the doctor that was taking care of me, Dr. Henderson, about my neck and back and foot. He said, "There isn't anything we can do until we get your leg out of the way."

Q. When you were in this cast, did they make any opening in the cast in order that they could take care of this abscess?

A. No. Dr. Thatcher just said that. No, there was no chance there; there was nothing.

Q. No way of taking care of it? A. No.

Q. Did it just drain down inside that cast?

A. It didn't drain very much, just a small amount that it would drain but not enough so that they had to make a hole.

Q. After the cast was taken off, did they treat the abscess? A. No, he has not.

(Testimony of Maggie Mae Teutschman.)

Q. Has he done anything? A. No.

Q. Have you had it examined by a doctor?

A. No.

Q. Going back to Los Angeles, now, as I understand, you went to the downtown ticket office to buy your ticket home? A. Yes.

Q. That was the ticket office of the Southern Pacific Company? A. Yes. [46]

Q. You said you asked for a lower berth?

A. Yes, I did.

Q. Assuming you had received a lower berth, you never even looked at your ticket?

A. No, I didn't.

Q. So, you didn't know what you actually received? A. No.

Q. Do you know how much you paid for it?

A. I couldn't say just what I paid; couldn't say just what it cost me.

Q. You rode a day coach from Los Angeles up to Martinez? A. Yes, I was on a day coach.

Q. So, you did not have a Pullman ticket all the way through, apparently?

A. I don't know what she sold me. I know I had a ticket all the way to Portland and I had an upper berth, or lower berth, supposed to be.

Q. You had two separate pieces of paper, didn't you? One was your railroad ticket; the other was your berth ticket?

A. No, I never had but one ticket.

Q. You had only one piece of paper?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. But you did ride the day coach up as far as Martinez? A. Yes.

Q. Were there any Pullman cars on that train?

A. Couldn't say.

Q. Who was the Pullman man you say you talked to on that train?

A. I don't know who he was.

Q. How do you know he was a Pullman man?

A. I know they are in white; they are dressed in white.

Q. If there was no sleeper car on that train, there wouldn't have been any Pullman man on there? A. I don't know what he was.

Q. Was he a colored man? A. What?

Q. Was he a colored man?

A. No, I don't think he——

Q. Was he a white man? A. Yes.

Q. Dressed in white?

A. I don't remember just about that. I really don't, but I know he was supposed to go on that train out to the end of the line and come back with it.

Q. I suppose somebody told you you were to get off at Martinez and change trains?

A. The conductor told us that when he came through taking the tickets, as I remember.

Q. The conductor of the day coach?

A. Yes.

Q. He is the one who told you to change trains at Martinez? [48]

(Testimony of Maggie Mae Teutschman.)

A. Yes, I think he was. I don't just remember. I know I was supposed to get off there and change cars, but I didn't know why.

Q. You got off and waited in the station for about an hour and a half or two hours for the next train?
A. Yes.

Q. You had been told to change trains there and you had been told what train to take?
A. No.

Q. How did it happen you went out to get on this particular train?

A. Well, we all stood there and waited and watched the time until the train came and, when the train came, everybody that got off the same train where I was all went out to get on that train. One man that was on that train, he carried my bag for me out to the train, and we all went on the same train.

Q. Did he get on the same car when you did?

A. Yes.

Q. Sure of that?

A. Yes, he got on the front end. I couldn't get on the front end. He got on there. I couldn't get on the front end because I had a berth ticket and I had to go back to the back of the train to get on.

Q. He did not get on the same car you did?

A. No, he got on at the front end. I got on at the back end. [49]

Q. You carried your baggage or bag to the back end?
A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. What did your baggage consist of?

A. A shopping bag full of slippers and things and my violin.

Q. Did you have a violin? A. Yes.

Q. In a violin case? A. Yes.

Q. Weren't you using that violin case as a suitcase?

A. No. I had nothing in it but my violin.

Q. You got down, then, to the end of the train where this Pullman car was. Was there a conductor out on the ground by the door? A. Yes.

Q. And a porter also?

A. The porter, he stood up on the steps.

Q. Did you show your ticket to the conductor?

A. I couldn't say if I did or not.

Q. You said he didn't seem to want to let you on the train?

A. No, it didn't seem he was going to let me on at first.

Q. What did he do?

A. He just said, "Well, you ain't going to get on here" or something like that to me. He wasn't going to, at first, let me on.

Q. Is that what he said? [50]

A. Yes. Then I said, "Well, I have a ticket. How does it come I don't get on." and then he said to the porter, "Take her on, then."

Q. All this conversation was without you even showing your ticket?

A. I wouldn't say that I didn't show him my ticket. I don't remember whether I showed him the ticket or not.

(Testimony of Maggie Mae Teutschman.)

Q. Don't you recall him telling you that was the wrong train? A. No, he didn't.

Q. That this ticket was for the next train?

A. He didn't.

Q. Don't you recall complaining to him about having to walk back to the station again?

A. No, I don't recall complaining to him about walking back to the station.

Q. You got on this car, then? A. Yes.

Q. The porter started to make up this upper berth 14? A. Number 14, yes.

Q. Were all the berths in the car made up except that one?

A. I don't remember any other berth, only that one. They all had curtains on there, but this is the only one——

Q. They were all made up excepting Upper 14?

A. They was all hid. I don't know whether they was made up or not. [51]

Q. All hidden with curtains? A. Yes.

Q. There were no curtains on Upper 14 at all?

A. No, not that I saw.

Q. Were there or were there not, Mrs. Teutschman?

A. If there was, I didn't see any. I didn't see no curtains.

Q. Could they have been there without your seeing them, do you think?

A. I don't know whether they could or not. It could have been such a thing, but if there was, must have been pulled clear back, because there was nothing in front of my berth.

(Testimony of Maggie Mae Teutschman.)

Q. Did you look for curtains?

A. No, I didn't.

Q. You did not? Weren't you interested in having curtains on that berth?

A. I don't know how they was supposed to be. I never was in one of these places before. I noticed the rest of them had curtains. I wondered, how does that come I don't have any curtains on my berth, but I didn't see no curtains.

Q. The porter helped you inside the berth, Upper 14? A. Yes.

Q. And you lay down and went to sleep with your clothes on? A. Yes.

Q. You did not ask the porter for any curtain?

A. No, I didn't, didn't do anything. [52]

Q. Did it occur to you to ask the porter where your curtains were?

A. He just put me up in the berth and then just went.

Q. It did not occur to you to ask for curtains?

A. I didn't have no chance to ask him for no curtains. He just put me up in the berth and disappeared. I never seen him any more.

Q. Did it occur to you to look at the ends of the berth to see if there were curtains there which you could pull back?

A. No, never thought about that.

Q. You never thought about that either?

A. No.

Q. You lay down and went to sleep?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. In an hour or two hours, something like that, you waked up, as I understand it? A. Yes.

Q. And you rang this bell? A. Yes.

Q. Did the porter—you say the porter came to your berth? A. Yes, he did.

Q. What did you say to the porter when he came there?

A. I asked him if I could have a drink.

Q. What did he do?

A. He didn't do anything. He just went and got it. [53]

Q. Turned around and went and got the water and brought it back to the berth? A. Yes.

Q. Did you say anything about the curtains at that time?

A. No, I didn't. He just handed me the cup of water up and went. I didn't speak to him and he didn't speak to me.

Q. You spoke to him to ask him for the water?

A. Yes, I might when he handed the drink.

Q. That is when he came back? A. Yes.

Q. Was this a colored man, this porter?

A. Yes.

Q. You are quite sure it was he who brought you the drink of water? A. It was a colored man.

Q. It was not the conductor? A. No.

Q. You remember quite clearly ringing for him and having him come and asking him for a drink of water? A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. When your deposition was taken, didn't you testify you rang the bell and the porter came and he brought you the drink of water and you never said anything to him and he didn't say anything to you? A. That is right. [54]

Q. You rang the bell, the porter came and you asked him for a cup of water. Then, you say he went and got it and brought it back to you?

A. Yes.

Q. When your deposition was taken, is it not true that you testified that you rang the bell and the porter came and—the porter came to your berth with a cup of water? Reading from page 44 of your deposition, I will ask you if this was not your testimony:

“A. * * * I know when I woke up I wanted a drink of water, and I discovered this bell on the wall and I rang the bell and the porter came in and gave me a drink.

“Q. And who was it, the porter or the conductor? A. The porter.

“Q. A colored man?

“A. Yes, a colored man.

“Q. With a white coat?

“A. Yes, with a white coat.

“Q. What did you say to him?

“A. Nothing.

(Testimony of Maggie Mae Teutschman.)

“Q. How did he know you wanted a drink?

“A. I rung the bell and when I rung the bell he come and fetched me a drink of water.

“Q. He came and brought you a drink of water? [55]

“A. In a paper cup.

“Q. You didn’t have to ask for the water?

“A. No, I didn’t have to ask for the water. All I did was ring the bell.”

Do you remember testifying that way in your deposition?

A. I might have, but I rung the bell and he came. I asked him if I could have a drink and he went and got a drink of water and came back and handed it to me.

Q. It was your testimony on your deposition that he came and brought the water without you asking for it, wasn’t it?

A. I could have been a little confused and nervous.

Q. Now, you have got a clear recollection of asking him to bring you a drink of water?

A. Yes, because he come after I rang the bell. I asked him if I could have a drink.

Q. Didn’t you take any medicine with it?

A. I did not.

(Testimony of Maggie Mae Teutschman.)

Q. You had some medicine with you?

A. I had some pills that belonged to my sister. That same doctor was treating my sister and she says that he gave her some pills for her headache and used them when she would travel on a long journey, sometimes, for a headache. She put some of them in a bottle and wanted me to take them. I told her I did not want them; I would not take any sleeping pills. She stuck them in my coat pocket and she said, "You take them along, if you get [56] a headache or anything." They didn't belong to me. They belonged to her.

Q. What were they, capsules?

A. I never looked at them.

Q. You saw them?

A. No, I never paid any attention. I saw them in the hospital when they talked to my sister.

Q. You saw that they were capsules?

A. Yes.

Q. Yellow capsules?

A. I didn't pay any attention.

Q. Don't you recall they were yellow?

A. No, I don't know a thing about that.

Q. Did your sister tell you what they were?

A. No, she didn't know herself.

Q. You carried that bottle in your pocket?

A. Never had it out of my pocket from the time she put it in there until after I was in the hospital. My neck hurt me so bad, and when the nurse came I told the nurse "There is some pills in my pocket in a bottle that my sister put in there. Get them and hand them to me."

(Testimony of Maggie Mae Teutschman.)

Mr. Ryan: I am going to enter an objection about—to any question about pills. I don't see where they have anything to do with the case. I think that is irrelevant to the issues.

The Court: Go ahead, Mr. Strayer. [57]

Q. (By Mr. Strayer): You say you told the nurse that these pills were in your pocket?

A. Yes, I told her, "There are some pills in my pocket that my sister put in there, in case I get a headache," and she went and got them out of my pocket.

Q. What did she do with them?

A. I don't know. She kept them and when my sister came I told her, "Those pills you took out of my pocket belongs to my sister. You should give them back to her," and she gave them back to her.

Q. You never had the bottle open so that you might see?

A. I don't remember.

Q. Didn't open it at all?

A. I didn't. I had no headaches.

Q. Didn't take any pills out of it?

A. I had no reason for taking any.

Q. When you rang for the porter to bring you a glass of water, you didn't tell him you wanted to take some medicine?

A. Didn't what?

Q. Did you take any medicine before you got injured?

A. Never took any; never took any from the time I left Los Angeles until I went to the hospital. I felt wonderful.

(Testimony of Maggie Mae Teutschman.)

Q. You were not in any pain?

A. No. My sister fixed up my lunch for two days. I ate it all one time and besides I went in the diner and had a cup of [58] coffee.

Q. Were you waiting in the railroad station with any people? A. I was.

Q. Did you take any medicine while you were there? A. I did not.

Q. You say after the porter brought you the glass of water you went back to sleep again?

A. Yes.

Q. And some time during the night you started raising up, you say?

A. Yes, I woke up and just started to raise—didn't get my head off the pillow and the next thing I knew I was right out there on the floor.

Q. Were you lying on your back at the time?

A. Yes.

Q. Did you start to turn over?

A. I just started to raise my head up and, as near as I remember, I just went right on out.

Q. Did you go out feet first?

A. I don't know whether I did or not.

Q. You were awake, weren't you?

A. I was just halfway awake; just woke up out of a sleep; I just went to raise my head and I just went on out and hit the floor.

Q. Went on out? [59]

A. Just went right onto the floor.

(Testimony of Maggie Mae Teutschman.)

Q. You don't know whether you went feet first or head first?

A. Suppose I must have went sideways, the way I was laying.

Q. What part of your body hit the floor?

A. I don't know.

Q. You have no idea?

A. I have no idea how I hit the floor.

Q. Were you awake as you were falling?

A. Yes, but, at the same time, not too awake. I realized when I hit the floor; made kind of a funny, crumpling noise when I hit the floor.

Q. Did you grab hold of anything as you fell?

A. No, just went right out and hit the floor.

Q. Dr. McVicker testified in his deposition that you told him you grabbed the rail as you fell. Do you recall that?

A. Didn't tell him anything of the kind because I didn't grab no rail at all.

Q. That is not true, then?

A. No, it is not true.

Q. Were you facing the berth as you went out, as you fell, or did you have your back to the berth?

A. I couldn't hear what you said.

Q. As you fell out of the berth, were you facing the berth or did you have your back to it?

A. I was laying flat on my back. Like this was the berth [60] (illustrating), my head was here; I was laying flat on my back on the berth. I woke up, just went to raise my head and went on out. The next thing I knew I hit the floor.

(Testimony of Maggie Mae Teutschman.)

Q. What position on the floor?

A. I was on my back.

Q. Did you have any pain? A. Not then.

Q. When did you first have pain?

A. When I was in the hospital, when they went to take the X-ray pictures.

Q. You had no pain before that?

A. Oh, I was——

Q. Were you conscious when you hit the floor?

A. I don't know if I was conscious or if it knocked me out. After I hit the floor, I couldn't remember because—one thing I do remember is that I was trying to raise my shoulders up and the conductor come and he had a flashlight in his hand and he looked over there and saw me and he said, "Did you fall out of bed?" I said, "Yes, I fell out of bed," and he come over and started raising me up by the shoulders. Just about that time the porter come and the two of them were trying to lift me up and I passed out; never knew when they lifted me up.

Q. You remembered nothing further until you were taken to the hospital?

A. No, I didn't remember any more until they had taken me off [61] the train. I just was barely to enough to realize they was handling me around.

Q. Weren't you advised by your doctor the draining fistula you had on your leg was osteomyelitis? A. No, he called it a flesh abscess.

Q. That is what Dr. Harroun called it?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. The next doctor you had in Los Angeles, didn't he call it osteomyelitis?

A. He said it could have been, yes, a case of osteomyelitis.

Q. Have you had other doctors tell you that?

A. No.

Q. The first doctor you had at Redding was Dr. McVicker. He was the Southern Pacific doctor.

A. I couldn't tell you. I don't know who I had or what he was.

Q. You did have Dr. McVicker for awhile?

A. I don't know his name.

Q. The Southern Pacific doctor?

A. That is what they told me.

Q. You discharged him from the case and hired an osteopath? A. I didn't discharge him.

Q. You hired an osteopath, did you not?

A. No, I didn't.

Q. You didn't? [62] A. No.

Q. Did you hire a doctor at all? A. No.

Q. Who was the doctor you paid the \$10 to?

A. He was the doctor that put my leg in a splint and fixed it so I could travel with it from there to here.

Q. That was not the Southern Pacific doctor?

A. No.

Q. Where did he come from?

A. I don't know. He was a doctor that was in Redding. The hospital called him.

Q. Did he say anything about the sore on your leg? A. No.

Mr. Strayer: I think that is all.

(Testimony of Maggie Mae Teutschman.)

Redirect Examination

By Mr. Ryan:

Q. Mr. Strayer asked you if you quit your job at the Porter Building about four years before your first injury? A. Four years after.

Mr. Strayer: Four years before the second, I meant to say.

Mr. Ryan: That is all.

Mr. Strayer: I might have one or two more questions.

The Court: It is practically 12. Let us finish with her now. [63]

Mr. Strayer: I want to look at a sealed exhibit.

Recross-Examination

By Mr. Strayer:

Q. Mrs. Teutschman, I hand you Pre-Trial Exhibit No. 10. Is that your signature at the bottom?

A. Yes, it is.

Q. On the second page, is this also your signature? A. Yes.

Q. And on the third page, likewise, is that your signature? A. Yes.

Q. Do you recall when that statement was signed? A. No.

Q. You do recall signing it, however?

A. I don't recall signing anything, no.

Q. This is dated January 10, 1946. Do you recall talking with Mr. Zeller about your accident?

A. That is right.

(Testimony of Maggie Mae Teutschman.)

Q. I presume in Redding?

A. No; I never talked to anybody in Redding about my accident.

Mr. Strayer: I offer the statement in evidence, your Honor.

Mr. Ryan: No objection.

The Court: Admitted.

(Document consisting of three pages entitled "Statement Relating to Accident" and signed "Mae Teutschman," was thereupon received in [64] evidence and marked Defendant's Exhibit No. 10.)

Mr. Strayer: I would like to read this statement to you. It may recall to your mind some things you have forgotten.

"I was 61 years of age October 16, 1945." Is that the correct date of your birth?

A. Yes.

Q. "I went to Los Angeles September 23, 1945, and since that time have been visiting my sister, Violet Groestein at 705 West Sixth Street, Los Angeles. I left Los Angeles at 8 a.m. January 9, 1946, on Train No. 51, my ticket number being 659 and calling for window seat No. 11, Car 66. I held Pullman space from Martinez to Portland, and occupied Upper 14 in Tourist Car K.G. I retired about 10:30 p.m. and lay facing the fall. I went to turn over during the night and in doing so fell over the edge of the berth to the floor, injuring my right knee."

A. I never went to turn over.

(Testimony of Maggie Mae Teutschman.)

Q. That is incorrect, then?

A. It sure is.

Q. "There was no sudden jerk, lurch or movement of the train which caused me to fall from the berth."

Is that correct? Was there any jerking movement of the train?

A. I couldn't say whether there was or not.

Q. "There was nothing unusual about the movement of the train which in any way contributed to my injury. The sole cause of my injury was the fact there was nothing at the edge of the berth to prevent me from falling out." Is that correct?

A. I didn't understand.

Q. "The sole cause of my injury was the fact there was nothing at the edge of the berth to prevent me from falling out."

A. There was nothing there, no.

Q. "I am quite certain I landed on my feet when I struck the floor and then fell backwards to the floor." How about that? A. No.

Q. You don't think you fell on your feet?

A. I didn't.

Q. What part of your body do you think struck the floor first?

A. I don't know a thing about it.

Q. You just don't know?

A. I just don't know.

Q. "My only injury seems to be to my right knee, and I have previously suffered from bone infection in this leg." Do you remember saying that?

(Testimony of Maggie Mae Teutschman.)

A. That is all talk.

Q. It is not true you had a bone infection in your right leg?

A. He never asked me such a question.

Q. "In fact, that is one of the reasons I went to Los Angeles. While there, I took 120 penicillin treatments from Dr. Harger [66] on 2nd and Figueroa Street, Los Angeles, for this bone infection in my right leg."

Did you tell Mr. Zeller that? A. I didn't.

Q. "I am going to continue these treatments when I get back to Portland." You expected to continue those treatments?

A. No, I don't expect to.

Q. "The interior of the Pullman car in which I was hurt was dark at the time of my injury but this had nothing to do with my injury at all as I simply turned over and fell right out of the berth."

You say that is not true. You did not turn over?

A. No.

Q. "I grabbed onto the pole at the edge of the berth as I fell and broke the force of my fall considerably." You say that is not true?

A. Never caught onto nothing.

Q. "I didn't seem to fall hard." What would you say about that now?

A. Well, I will tell you the whole truth of it. They misrepresented that to me. That was why my sister was there with me all the time in the room. They evidently had this all fixed up. He sat there and waited until after my sister went out of the

(Testimony of Maggie Mae Teutschman.)

room and went over to her room and I laid there all alone. I was laying on my back facing the wall, and a man came in with [67] a piece of paper in his hand and said, "Mrs. Teutschman, I have got a little form here that we will have to sign up so we can get you out of here and take you to San Francisco to the company's hospital."

So, I say, "Well, you had better call my sister. She will come here in a few minutes," because I had lost my glasses and I couldn't read a word, couldn't see one word from the other without glasses, and I said, "You call her and she will come right back."

He said, "Well, I don't think that is necessary. It is just a little form that we have got to take you out of here to take you to the hospital. You have got to get something done for your leg. You have been laying here——" So, he said, "I will read it to you."

I couldn't turn over until the nurse come to help me, so he said, "I will read it to you," so he read it to me, but he didn't read me anything like that.

Q. Do you remember calling his attention to certain errors in it when he read it to you?

A. No, didn't call any attention. He didn't read me this.

Q. Do you remember making some corrections in it and he making them for you?

A. I didn't make any corrections.

Q. Don't you remember putting your initial on some of those corrections? [68]

A. No, I don't remember.

(Testimony of Maggie Mae Teutschman.)

Q. I will call your attention to the first page. Notice where these words are crossed out. Are those your initials by that correction?

A. That is not mine.

Q. Aren't those your initials here? A. No.

Q. That is your initial over here?

A. No, I never make a "T" like that. This (indicating) is my signature.

Q. Isn't that just like the "T" down below? You don't think you signed that? A. No.

Q. How about this one up here? Do you recall signing that? A. No.

Q. You don't remember making any corrections or doing any crossing out? You don't remember making any of those corrections?

A. I remember signing it, but what I was supposed to sign was just a form that I was willing for them to move me out of the hospital and take me to the hospital in San Francisco. They telegraphed my husband that they were taking me down there the next day, so he bought a ticket straight through to San Francisco.

Q. Do you know where Mr. Zeller got all the information that is in this statement?

A. I don't know anything about that.

O. You don't know where he got it?

A. No. He didn't ask me nothing.

Mr. Strayer: That is all.

(Testimony of Maggie Mae Teutschman.)

Redirect Examination

By Mr. Ryan:

Q. This statement is not in your handwriting?

A. No, it is not in my handwriting.

Q. Do you remember the coach you rode in?

A. I do not.

Q. Do you know it now? Do you know whether it was Seat No. 11 in Car 66?

A. Seat No. 11, but I don't know what number the car was.

Q. Do you know the number of the Pullman car?

A. No.

Q. Do you know what happened to your Pullman ticket? Did you have your Pullman ticket with you at the time this statement was taken?

A. It is in my hand-satchel.

Q. You did not have it with you? A. No.

Q. Was your hand-satchel in the hospital?

A. Yes.

Q. Your sister was there in the hospital at the time?

A. Well, yes, she had a room at the hospital. She was sick herself but she would come over and sit with me and then go back [70] to her room.

Q. You were injured January 9th, weren't you?

A. Yes. Well, yes, I left Los Angeles on the morning of the 9th and then the next morning, you see, I was hurt.

Q. When did they take you to the surgery at the hospital. A. Where?

(Testimony of Maggie Mae Teutschman.)

Q. At Redding.

A. They never did take me to the surgery.

Q. Didn't they set your leg?

A. They never took me out of bed. They never done one thing for me, only gave me hypos.

Q. That is all they did?

A. They kept me under hypos.

Q. Had you been taking hypos at the time you signed this paper?

A. Yes. They gave me hypos all the time I was in there. They kept me under them all the time.

Q. Did you, at any time, sit down and tell the story to Mr. Zeller or any man?

A. Never talked to that railroad doctor in my life.

Q. This man that said he was going to take you to the Southern Pacific Hospital? A. No.

Q. Did he sit down and did you make a statement to him that he copied down?

A. I did not. He just come in and he told me, "Mrs. Teutschman, [71] I have got a little form that we have to have you sign so as we can take you out of this hospital and take you down to San Francisco to the railroad hospital."

The Court: What is the date on it?

Mr. Ryan: January 10th.

The Court: What time?

Mr. Ryan: No time stated.

A. No, it was not the 10th, because I had been in the hospital for three days before I signed that.

(Testimony of Maggie Mae Teutschman.)

Mr. Strayer: I don't know whether that "10th" means the date of taking the statement or the date of the accident.

Mr. Ryan: It is dated January 10th.

A. That is all false.

The Court: Was her leg set there?

Mr. Ryan: No, it was not set.

Mr. Strayer: I don't know whether the doctor testified about the splint.

Q. (By Mr. Ryan): Are you sure this statement here is the paper you signed when you talked to the man about going to the hospital at San Francisco?

A. I am telling you, I really didn't see the paper he had. I didn't see it.

Q. It could have been some other paper you signed on the 10th?

A. It could have been some other paper. I didn't sign anything on the 10th, I know, because they took me in the hospital on [72] the 10th about 2:30 at night and I was in there for, I guess it was three days and nights before I signed anything.

Mr. Ryan: That is all.

Mr. Strayer: That is all.

(Witness excused.)

The Court: Will you have more witnesses?

Mr. Ryan: I will have, yes, your Honor.

The Court: Who are they?

Mr. Ryan: I have a porter to testify how they make these berths up, and I have someone to testify about her condition before the accident.

The Court: How many witnesses will you have, Mr Strayer?

Mr. Strayer: I will have seven, your Honor.

The Court: We will start at 1:30 this afternoon.

(Recess was then taken until 1:30 o'clock p.m.) [73]

Court reconvened at 1:30 o'clock P.M., Tuesday,
September 9, 1947.

ALBERT LOCKE

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Locke, you reside where?

A. 1861 Southwest First.

Mr. Strayer: If your Honor please——

Mr. Ryan: I prefer to have my client at the table.

The Court: Will she keep quiet?

Mr. Ryan: I will instruct her.

The Court: I know you will. That is what you did this morning, but will she? That is the question.

Mr. Ryan: Yes, your Honor, I believe she will.

Q. You reside in Portland, Oregon?

A. I do.

Q. What is your occupation now?

A. Porter and janitor work.

Q. You work for the City? A. Yes.

(Testimony of Albert Locke.)

Q. You are not working for the Pullman Company? A. Not now.

Q. Did you ever work for the Pullman Company? A. I have, yes.

Q. How long did you work for the Pullman Company?

A. A year and a half or eighteen months, something like that.

Q. What kind of work did you do for the Pullman Company? A. Pullman porter.

Q. Pullman porter? A. Yes.

Q. Did you take any training to get that job?

A. I did.

Q. What kind of training did you take?

A. I took training in making beds and fixing the berths and service to the passengers in general.

Q. Did the Pullman Company give all prospective porters that training?

A. They did me. I don't know whether they gave them all that or not.

Q. Are you acquainted with the type of berth that had the curtain on the upper berth and a separate curtain on the lower berth? A. I am.

Q. Is that the berth that is in pretty general use on Pullman cars? A. It was at that time.

The Court: What do you mean by "separate"?

Mr. Ryan: There are two types of berths, your Honor. There is one that has a curtain completely from the top to the bottom.

The Court: The picture I have here, a pre-trial exhibit, is the single-curtain type. Show him the exhibit, Clerk.

(Testimony of Albert Locke.)

Q. (By Mr. Ryan): Are you acquainted with that type of berth?

Mr. Ryan: What number is on the back?

The Clerk: Defendant's Pre-Trial Exhibit No. 8.

A. This is something similar to what we used to call the "Semi-Grant." It has a separate curtain over the lower berth.

Mr. Strayer: A separate curtain?

A. It has a separate curtain over the lower berth.

Q. A separate curtain over the lower berth? Then, there is one that hangs all the way down from the top?

A. There is one on the top. I don't know whether they used one more or not, but there used to be one on the top that covers both berths. That is one single curtain.

The Court: There is no picture—What type do you claim that to be, Mr. Strayer?

Mr. Strayer: That is known as the Grant type, one curtain that hangs from the top to the bottom.

The Court: Get that picture then and stop this confusion. Show Mr. Ryan the first one. Which curtain are you going to claim was on this berth?

Mr. Ryan: We don't know what curtain was on this berth. [76] I want the witness to testify as to the correct curtain to be on the train at that time and how the curtains are used.

The Court: Are you going to produce testimony that this was the single-type curtain?

Mr. Strayer: Yes.

(Testimony of Albert Locke.)

The Court: Have you got a photograph, an exhibit?

Mr. Strayer: They are all the same, just different views of the same curtain, your Honor.

The Court: This is a single curtain?

Mr. Ryan: This is a single curtain, yes.

Mr. Strayer: This is a single curtain, your Honor.

The Court: Show it to Mr. Ryan. He says that is a single curtain.

Mr. Ryan: This is a single curtain.

The Court: It doesn't look like it to me.

Mr. Strayer: There is one curtain. They are split about halfway in to the center, where they divide. They are all one curtain.

The Court: They are divided crosswise?

Mr. Strayer: Yes, about half the width of the curtain.

The Court: Let us settle this now, if we can. You mean, it is not one piece of fabric?

Mr. Strayer: It is all joined into one piece, yes. I think this photograph, No. 5, will demonstrate what I mean. It extends clear across half of one berth and half of the next berth. It [77] is split about halfway across, crosswise. The view on this other photograph, No. 8, is exactly the same curtain with the exception it shows a part of the two curtains which are split.

The Court: All right. Go ahead.

(Testimony of Albert Locke.)

Q. (By Mr. Ryan): As a Pullman porter, in making up an upper berth, what would be your duties, in connection with a berth of this type?

A. Well, my instructions were to—after I made the berth, to assist the passenger into it, to instruct them how to come in and out of the berth; tell them if they needed anything to ring the bell and I would come and assist them in and out of the berth.

Q. What would you do with regard to the curtains?

A. I would fasten it when I put the passenger in the berth.

Q. By fastening it, where would you fasten it?

A. Fasten at the bottom; fasten at the edge of the berth where there is provision for——

Q. That is where these buttons are?

A. Sure; there is where they provided to fasten your curtain on and fasten the passenger in.

Q. The passenger getting in the berth, would the curtain be apart?

A. It would have to be for them to get in there.

Q. Who would pull the curtain together?

A. I would. [78]

Q. Had you been instructed to do that?

A. I was instructed to do that.

Q. Do they provide a web netting in berths of this type?

A. On some types of berths. Those that I have worked on have had a web netting for the front and back.

(Testimony of Albert Locke.)

Q. Would there be a web netting provided for this type of berth?

A. I wouldn't know about this type, but you take the type that does not have this at all—they have a type of curtain that swings clear from the top railing to the floor. They have had that type of curtain, a type of curtain provided with a web in front and back.

Q. This type?

A. I wouldn't know about this type of curtain.

Q. If that curtain were pulled, not buttoned in the middle but pulled to the middle——

A. Without being buttoned in the middle, they are going to fall out.

Q. If it were fastened right there (indicating)——

A. Couldn't fall out if it was fastened; couldn't fall out if this curtain was pulled and fastened to this rod; they couldn't fall out.

Q. That is a safety device that is used ordinarily?

A. That is a safety device.

Q. That is the porter's job to fasten it? [79]

A. The porter's job to fasten it.

Q. To fasten it every night after he makes the berth?

A. After he makes the berth, after the passenger is in this bed. If they want to come out, you are supposed to ring and you go and get a ladder and assist them down.

Q. After the passenger is in bed, does the porter have any duties?

(Testimony of Albert Locke.)

A. The porter is required to watch your car, patrol back and forth and, if you see anything wrong, I would go there and see what it was, if it was anything out of the way, and straighten it out.

Q. Have any duty to call to the attention of the passenger as to how to pull the curtain or how to button the curtain?

A. No, didn't tell them anything about that; just fasten the curtain myself and tell them if they wanted anything, to call me.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. How long did you work for the Pullman Company? A. Worked for them in 1925.

Q. You worked for them about a year and a half?

A. Yes. Worked until the latter part of 1926, some time in November or October.

Q. What did you say about it? All the cars you were working [80] on had this type of protection?

A. You say, how many?

Q. All the cars you worked on had this web type of protection?

A. Not all of them didn't have; some did; some of them had the same curtain type; some had a different type of curtain—two individual curtains making four curtains altogether, two for the top and two for the bottom.

(Testimony of Albert Locke.)

Q. The web has not been in use for a number of years.

A. Not that I know of; it has been twenty years since I worked for the Pullman Company.

Q. This type of curtain shown in the photograph is still an older curtain?

A. Still an older curtain, yes.

Q. You have had no experience at all with this type of curtain?

A. Not with this type of curtain.

Q. Have you ever seen this type of curtain?

A. Never saw it until just now.

Q. When you testify as to how you were accustomed to put a passenger in a berth and button the curtain, you are talking about a different kind of curtain?

A. Talking about a different curtain than what this shows.

Q. You do not know of your own knowledge that it is necessary to unbutton this curtain in order to get in a berth or not?

A. No, sir, I couldn't say.

Q. You don't know but what it might be possible to slide this [81] (indicating) on the rod and get in and out of the berth without unbuttoning?

A. I don't know but what it would be.

Q. With this type of curtain, in order for there to be any curtain at all on the lower berth, there would have to be a curtain on the upper berth?

A. Would not have to be fully drawn. This type of curtain would not have to be fully drawn on the upper berth, but the lower berth could be closed.

(Testimony of Albert Locke.)

Q. Would have to be separated?

A. Would have to be separated because they are both joined together.

Redirect Examination

By Mr. Ryan:

Q. That would not necessarily mean that the curtain would have to be buttoned?

A. No, would not necessarily have to be buttoned.

Mr. Ryan: That is all.

(Witness excused.) [82]

VIOLET HISER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Where do you live?

A. 1867 Southwest Fourth.

Q. Are you acquainted with Mrs. Teutschman?

A. I am.

Q. How long have you known her?

A. Three years.

Q. Describe the way she got around before this accident?

A. To be truthful, I didn't know there was anything wrong with her. She got around well. I

(Testimony of Violet Hiser.)

didn't know there was anything wrong with her. She never told me that she had a bad hip. I never suspected it.

Q. Did she have any difficulty dressing?

A. Never to my knowledge before this accident.

Q. I mean, now?

A. Oh, yes. Now she does, yes, sure.

Q. Have you helped her?

A. Yes, I have.

Q. How much help does she need in dressing?

A. She cannot—I do know her husband has to put her stockings on of a morning before he leaves, if she goes downtown. [83]

Q. Have you ever helped her put on her dress, put on her clothes? A. I have, yes, sir.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. Do you live at the same place?

A. No, I don't.

Q. Is it Mrs. Hiser? A. Mrs. Hiser.

Q. How far away do you live from Mrs. Teutschman?

A. I live about two blocks altogether now.

Q. Had you formerly lived closer by?

A. I lived in the same house with her. I have also taken care of her when she was——

Q. Were you living in the same house with her at the time she went down to California?

A. No, I wasn't.

(Testimony of Violet Hiser.)

Q. You lived some block away at that time?

A. Yes.

Q. Had you seen her recently before she went to California?

A. Yes, I had seen her right along.

Q. Of course, you did not go to California with her?

A. Oh, no.

Q. You do not know what kind of condition she was in when she [84] started back from California?

A. No, I don't.

Q. How long had she been back when you saw her again?

A. I didn't see her until she came home from the hospital.

Q. That has been about how long ago?

A. Well, that was in March. Yes, about that time.

Q. A little over a year ago?

A. Yes, a year and a half ago.

Q. Have you seen her frequently since that time?

A. Yes, I have.

Q. Been over to her house?

A. Yes, sir.

Q. Does she seem to be able to get around the house all right?

A. Not very well.

Q. Does she do any work?

A. Not that I ever seen her do. I know Mr. Teutschman has about all the work to do.

Q. Pardon?

A. Mr. Teutschman does about all that is done.

(Testimony of Violet Hiser.)

Q. She does not do any work around the apartment, then?

A. I don't think she is able to get around, to go up and down steps.

The Court: How about her crutch? Does she walk with her crutch all the time?

A. Yes, she does. [85]

Q. (By Mr. Strayer): Who dresses her, usually?

A. Well, she has to have Mr. Teutschman, of course, now. I am employed at the Physicians & Surgeons Hospital, but I do know Mr. Teutschman still has to put her stockings on.

Q. How recently have you had that experience of seeing her have someone else to put her stockings, her shoes and stockings on?

A. It wasn't so terribly long ago she wanted to go downtown and I helped her dress.

Q. How long ago was that?

A. It has been about two months ago.

The Court: How would she get downtown?

A. In a cab.

Mr. Strayer: I think that is all.

Mr. Ryan: That is all.

(Witness excused.)

Mr. Ryan: That is our case.

Mr. Strayer: We would like to offer in evidence two depositions, those of Dr. H. R. McVicker and Archie V. Fraser. I understand your Honor has read them and I guess there is no particular point in reading them.

The Court: No. If there is anything you want to call my attention to in the argument, I would be glad to hear it.

Mr. Ryan: I wonder if I might call one more witness?

The Court: Yes. [86]

ALBERT TEUTSCHMAN

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Teutschman, you are the husband of Mrs. Maggie Mae Teutschman, the plaintiff?

A. That is right.

Q. Will you tell the Court what your wife's condition was prior to this accident? How did she get around?

A. She got along all right. She done the housework. She took in some washing and done the roomers' washing and got along all right.

Q. Did she do the housework around the apartment?

A. Yes, kept up the apartments and even done some washing for the tenants.

Q. What is her condition at the present time in regard to her ability to work?

A. It is not so very good. She can't get around very good.

(Testimony of Albert Teutschman.)

Q. Does she still need help dressing?

A. Yes, I have got to dress her if she wants to go anywheres.

Q. Do that every day?

A. Yes, got to put her stockings on, if she puts them on.

Q. Does she still use her crutches all the time?

A. Most of the time, yes. She has a hard time getting around [87] without them.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. Were you married at the time she had that first injury about sixteen years ago?

A. Yes. She got hurt.

Q. What? A. She got hurt on that wreck.

Q. Did you know about the sore she had on her upper leg or hip? A. Yes.

Q. The abscess? A. Yes, I knew that.

Q. She had that for a great number of years?

A. Yes, since 1931.

Q. Did you understand that was osteomyelitis?

A. What?

Q. Did you understand that the trouble she was having was osteomyelitis? A. Sorry.

Q. Did you understand that the sore she had on her leg was osteomyelitis?

A. Well, some call it this and some call it that.

Q. Did some of the doctors call it that?

A. Yes. [88]

(Testimony of Albert Teutschman.)

Q. Did you know of the treatment she had in California for it?

A. Yes, she told me she thought it might help if they gave her some penicillin shots.

Q. Did she say that before she left, or after she got back?

A. Her sister wanted her to come down there many times.

Q. What?

A. Her sister wanted her to come down there many times, so she came up and she went down with her, and thought it would be good for her to stay down in California for a while.

Q. Did you know she was going to have this treatment?

A. No, she didn't say nothing.

Q. You did not find out about it until she got back?

A. She wrote to me.

Q. You went down to Medford and came back with her?

A. Yes. The railroad company came up and told me that she got hurt, so, then, her sister called up and told me they were going to take her down to San Francisco to the hospital, so I got a round-trip ticket and went down there. Before I left, I called up and told them if anything should happen——

Q. I want to know: You went down and brought her back, did you?

A. I went down there and fetched her back.

(Testimony of Albert Teutschman.)

Q. Do you know whether this abscess she had was still running at that time?

A. I think there was still some sore, yes.

Q. Had your wife had trouble walking before she had this accident? [89]

A. How?

Q. Had she had trouble walking around before the accident?

A. Not a bit.

Q. Did she limp some?

A. Very little.

Q. Did she limp at times?

A. Yes.

Q. Had she done that ever since her first accident?

A. No. She got along pretty good. At first, when she got hurt, it was pretty bad and then later on she got along all right.

Q. At the time she left for California, was she limping?

A. When she went to California?

Q. Yes.

A. She went down the last part in September.

Q. Was she limping at that time?

A. Not very much, I don't think.

Q. She was limping some?

A. Very little.

Q. Was she limping some?

A. Yes, it was a little sore. It would bother her at times.

Q. Did she complain about her leg hurting her at that time?

A. No, she didn't say much; didn't hurt much. At first, she had quite a bit of trouble but the last year or so she got along fine. [90]

(Testimony of Albert Teutschman.)

Q. You said when she went to California her leg was a little sore. You mean, it was hurting her?

A. She didn't say nothing.

Q. What do you mean by saying it was a little sore?

A. Well, of course, it bothered her some at times.

Q. What?

A. It must have bothered her at times. She did limp a little at times.

Mr. Strayer: That is all.

Redirect Examination

By Mr. Ryan:

Q. On your trip back, how did you come back?
In a compartment?

A. Yes, we had to get a compartment.

Q. Where did your wife sleep?

A. She slept in the lower berth.

Q. Where did you sleep?

A. I slept in the upper berth.

Q. Anything said about your wife's accident by the porter at that time?

Mr. Strayer: Just a moment. I object to that, your Honor.

The Court: Sustained.

Mr. Ryan: That is all.

(Witness excused.)

Mr. Ryan: The plaintiff rests.

Plaintiff Rests. [91]

DEFENDANT, THE PULLMAN COMPANY'S,
TESTIMONY

Mr. Strayer: I understand the depositions are admitted, your Honor?

The Court: They are admitted.

(Deposition of Dr. H. R. McVicker, taken at Redding, California, August 4, 1947, thereupon received in evidence and marked Defendant's Exhibit No. 11.)

[Defendant's Exhibit No. 11 set forth at pages 184 to 203.]

(Deposition of Archie V. Fraser, taken on behalf of defendant, August 6, 1947, thereupon received in evidence and marked Defendant's Exhibit No. 12.)

[Defendant's Exhibit No. 12 set forth at pages 204 to 219.]

E. L. DEERING

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name is E. L. Deering?

A. That is right.

Q. Where do you live, Mr. Deering?

A. How is that?

Q. Where do you live? Where is your home?

A. Aberdeen, Washington.

(Testimony of E. L. Deering.)

Q. What is your occupation? [92]

A. The last work I done was working for the County, Grays Harbor County.

Q. Were you formerly a sheriff?

A. I was a deputy sheriff.

Q. Where was that?

A. Grays Harbor County.

Q. You are married? A. Yes, I am.

Q. Were you riding on a train coming back from California up towards Portland on the 9th of January, 1946? A. I was.

Q. Was Mrs. Deering with you?

A. Yes, she was.

Q. Where did you get on the train?

A. Merced.

Q. Merced, California? A. Yes.

Q. Did you change trains at Martinez?

A. Yes, we did.

Q. Did you get off the train there?

A. Yes.

Q. Where did you wait for your next train?

A. In the depot.

Q. In the waiting room?

A. In the waiting room at the depot. [93]

Q. Mrs. Deering was with you?

A. Mrs. Deering was with me, yes.

Q. Did you happen to notice Mrs. Teutschman, the plaintiff in this case? A. Yes.

Q. Do you recognize her here today as the same one you saw at that time? A. Yes.

(Testimony of E. L. Deering.)

Q. Where was she sitting with reference to you when you first saw her?

A. There were two seats across the depot this way (illustrating), about seven or eight feet apart. I was sitting on this seat, and she was on that seat in that direction from me.

Q. About how far away?

A. Oh, about seven or eight feet, something of the kind.

Q. She was facing you?

A. She was facing me.

Q. Can you tell us how she was dressed?

A. Well, I didn't particularly notice that, only that she had on a plaid jacket, kind of a jacket that comes around down like that (illustrating).

Q. Did you notice what kind of luggage she had with her?

A. Yes. I noticed in the seat behind her was that long violin case and some other stuff, but what it was I don't know.

Q. Tell the Court, while you were sitting there waiting for [94] your train, just how Mrs. Teutschman's actions were; tell us what she did and how she acted.

A. She attracted my attention to her on several occasions. I thought at the time that she was tead up a little bit, that she had been drinking something; what, I didn't know, but I thought that at the time. That is what attracted my attention.

(Testimony of E. L. Deering.)

Q. Can you tell us what she did?

A. Why, yes. If she caught you looking at her, she would smile at you; she smiled not only at me but at others.

Q. Was she sitting there all the time?

A. No, she wasn't.

Q. Did you see her get up?

A. She got up and went around that end of the bench and went, I suppose, to the rest room; I wouldn't say.

Q. Did you notice whether she had any difficulty in getting up or walking?

A. I didn't notice her getting up but in walking she had a limp in her right leg. As she came back to sit down she was limping in that leg. She sat down this way (illustrating) and she kind of grinned as she sat down, protecting her right hip.

Q. You said you had the impression she was tead up? A. I did.

Q. Elaborate on that, please. What do you mean?

A. I thought she had been drinking booze. That is what I thought about it. I thought she had had too much booze. [95]

Q. Did you ever get close enough to her to be able to tell whether she had been drinking?

A. I never was closer than seven or eight feet.

Q. When your train arrived, I take it you took your train? A. We took our train.

Q. Did you see her after that?

A. Never saw her no more after that.

(Testimony of E. L. Deering.)

Q. This is the lady you are talking about now, Mrs. Teutschman, here, the lady you saw in the station?

A. That is the lady I saw in the depot.

Mr. Strayer: That is all.

Mr. Ryan: That is all.

(Witness excused.) [96]

MRS. ESTHER DEERING

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name is Mrs. Esther Deering?

A. Yes.

Q. You are the wife of the gentleman who just testified?

A. I am.

Q. You are from Aberdeen?

A. Yes.

Q. You were with your husband on this occasion he told us about?

A. I was.

Q. Do you recall seeing Mrs. Teutschman in the waiting room at Martinez?

A. I do.

Q. Will you tell the Court what attracted your attention?

A. Her peculiar actions drew my attention, the way she was dressed; I think odd, very odd, looked peculiar. She had a red plaid blouse on

(Testimony of Mrs. Esther Deering.)

that hung loose, quite long. That is what drew my attention in the first place. Then, she was very peculiar in her actions.

Q. What did you see her do?

A. I seen her get up and go around the bench to the rest room [97] and then come back in. She come back the other end. When she sat down there, she sat down on the left hip and grinned as she sat down.

Q. Did she appear to be in pain?

A. Only just that she grinned when she sat down. She made quite a bit of fuss. I said, "That lady must be hurt."

Q. Did you notice when she walked whether she limped?

A. Very bad; at least, I thought it very bad.

Q. Did you see her any more after you left there?

A. Didn't see her any more.

Q. You have not seen her since then until today?

A. Not until today.

Mr. Strayer: That is all.

Mr. Ryan: No questions.

(Witness excused.) [98]

L. RAINEY

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Where is your home?

A. Oakland, California.

Q. You are employed as a porter by the Pullman Company, are you not?

A. Pullman porter.

Q. How long have you worked for the Pullman Company? A. Since 1943.

Q. Were you employed on this train in which Mrs. Teutschman was riding at the time she was injured? A. I was the porter.

Q. Where did you board that train?

A. Oakland Pier.

Q. What car were you assigned to?

A. I forget the number of the car, but the car was——

Q. Can you tell us what type of Pullman berth and curtains were on the car, what the car was equipped with?

A. This was a sixteen-section Tourist car. Each berth had fourteen buttons to fasten the curtains.

Q. Did it have the type known as the Grant-type curtains, do you know? I will ask you to look at these photographs which [99] are marked Defendant's Pre-Trial Exhibits 5 to 8 and tell us

(Testimony of L. Rainey.)

if they represent or show accurately the type of curtains that were used in that car?

A. This is the curtain here (indicating.)

Q. Pardon? How about the others?

A. This is the curtain, the same type of curtain. These are all the same type of curtain.

Q. Are they same type used on this car we are speaking about? A. Yes.

Mr. Strayer: I offer the pictures in evidence, your Honor.

The Court: Admitted.

(Four photographs thereupon received in evidence and marked Defendant's Exhibits No. 5½, 6, 7 and 8, respectively.)

Q. (By Mr. Strayer): Will you describe for the benefit of the Court the manner in which these curtains were attached to the berth?

A. Well, four buttons down——

Q. In the first place, how did you hook the curtain on? Was there a rod at the top?

A. A rod at the top. You make your lower berth first, then you make your upper berth, then you put your curtains on. Got hangers that hang across the rods. Then you fasten your lower berth curtains on. Then you fasten your upper berth curtains [100] on; that is, on both sides of the berth.

Q. In the center, the dividing line between the upper berth and the lower, is there a portion of the curtain that wraps around the rod?

A. Both lower and upper.

(Testimony of L. Rainey.)

Q. Did you button those flaps around the rod?

A. Yes.

Q. From the photographs, it looks as if the curtains are built in one piece, with a split in the center. Will you describe how they are built?

A. The curtains are this way: They cover half of two berths, but they are one curtain. But they cover half of two berths like 12 and 14. One curtain covers half of each berth.

Q. Where is the split portion of the curtain?

A. The split portion?

Q. Yes. About how wide is that place where the split occurs in the curtain?

A. There is no space between them. They both drop down. You can put one down and one up and fasten each curtain, if you want to make an SOS out of the berth.

Q. What is an SOS?

A. That is a word we use.

Q. That is not what I am getting at. I want to know if these flaps were taken apart, how wide would they open up?

A. You can push them clear back as far as the berth, the upper [101] curtain.

Q. The curtain is only split part way, as I understand.

A. Only split part way.

Q. Yes. You could not push the curtain back any further than the split, could you?

A. I don't quite get what you are speaking about.

(Testimony of L. Rainey.)

Q. We will take Exhibit No. 5, I think it is. It looks like the curtain was split about half of its width.

A. This here?

Q. I mean this split.

A. This part here? Where you button both ends of this curtain here?

Q. Let us take the photograph, Exhibit No. 8. Can you explain it from that?

A. When this is pushed around, is that what you mean?

Q. Yes.

A. This top curtain can go over to about here (indicating), but the bottom curtain can only come to here (indicating).

Q. How wide can you spread the top when opened?

A. Oh, just about to this button here (indicating).

Q. How wide would that be? Probably three feet, would you say, roughly?

A. Three feet or four. If you take these rods down, you can spread it still further, if you take these hangers off the rods, like this here (indicating); then you can push it back [102] to this headboard.

Q. In order to have a curtain on Lower 14, would you have to have a curtain on Upper 14?

A. To have a curtain on Lower 14?

Q. Yes.

A. This type of curtain, you have to have the top curtain all in one piece.

(Testimony of L. Rainey.)

Q. Because the curtain is divided between the two berths, 12 and 14.

A. It covers half of each berth.

Q. When you got on the train at Oakland, what did you do about making up the berths?

A. Made down half in the yard and the other half on the road, after leaving Berkeley, which was about 7:15.

Q. Can you recall at this time, by the time you got to Martinez, whether all this space had been made down? A. Hadn't quite finished.

Q. Do you recall first seeing Mrs. Teutschman?

A. Yes.

Q. Where was she when you first saw her?

A. She was about five or six cars—about five or six car lengths from the station, coming my way.

Q. Did you notice what luggage she had with her?

A. Well, at that distance, I didn't know what she had then, but she was coming towards the Pullman cars. [103]

Q. As she got closer to you, were you able to distinguish what she had with her?

A. Well, I knew she had a violin case with her.

Q. What can you say as to the manner in which she was walking?

A. She was very lame; took her quite a while to get from the station up to the car.

Q. When she got up to where you were, was there anyone else with you?

A. The porter in the next car and the conductor, the train conductor.

(Testimony of L. Rainey.)

Q. The conductor was Mr. Paisley?

A. Yes.

Q. What, if any, conversation took place when she arrived at the car?

A. Well, she walked up and she wanted to get on the train. I asked her to see her Pullman ticket. She showed it to me, and I told her that her ticket called for the next train that was coming behind us.

Q. What was the number of the train you were on?

A. 18, the Oregonian. Her ticket called for Train 20.

Q. What was the rest of the conversation, when you told her that her ticket was for the next train?

A. The conductor said, "Let her get on. We will have some space for her in your car." I helped her up to my car.

Q. You saw her ticket at that time. Did it call for an upper [104] berth or a lower berth?

A. Upper berth.

Q. Do you know whether or not you had any lower berths available on that car?

A. Not one.

Q. Did you have a talk with Mrs. Teutschman about whether she was to get an upper berth or a lower berth?

A. I don't recall talking about that, because she was not supposed to be on the train. I don't know how it was arranged on the next train.

(Testimony of L. Rainey.)

Q. What did you do about providing her with a berth?

A. Well, Conductor Paisley assigned her to Upper 14. That was her berth. I hadn't got that far then. When I made the berth up, then I helped her in the berth and, automatically, I pulled the curtains.

Q. Were you here this morning when she testified? A. Yes.

Q. Did you hear her testimony that a man got out of the berth? A. Yes.

Q. What are the facts?

A. The reason I say a man could not have got out of the berth is that that berth was not made.

Q. Had the berth been occupied prior to the time of getting to Martinez? A. No.

Q. The berth had not been made up? [105]

A. Had not been made; had not been occupied.

Q. Any reason why anyone would have been in it? A. No, sir.

Q. When you got the berth made up, did you help Mrs. Teutschman into the berth?

A. I helped her into the berth. She made the statement to me she just came from Los Angeles to see a doctor down there; and that she had spent some nine hundred and some-odd dollars on it and it didn't do any good. That is as far as she went.

Q. Was that all the conversation you had?

A. She went up in the berth, yes.

(Testimony of L. Rainey.)

Q. In making up that particular berth, let me ask you: Do you button these protective flaps down? A. Yes.

Q. At the lower end of the upper curtain?

A. Yes.

Q. Do you have to unbutton them in order—Did you have to unbutton them in order for her to get in the berth? A. No, just pull it aside.

Q. After she was in the berth, did you close the berth?

A. Took both ends and pulled them like that (illustrating). They came together, but I didn't button—from the top down, I didn't button them.

Q. Those buttons were on the inside?

A. Those buttons were on the inside, for her to button. [106]

Q. They are intended for the passenger himself to button? A. Yes.

Q. How about the hooks up on the top rod? Were they hooked over the rod A. Yes.

Q. You are quite sure of that?

A. Positive.

Q. Can you say whether you noticed anything about Mrs. Teutschman, when you first saw her, what condition she was in?

A. Well, not anything more than usual. We carry a lot of people and you see so much you don't pay a whole lot of attention.

(Testimony of L. Rainey.)

Q. Was your attention called to Mrs. Teutschman again during the night?

A. Well, at a quarter of 2, I got up—I go to bed from 10 to 2—and at a quarter of 2 was the first I knew she fell out of the berth.

Q. What happened then?

A. Well, the S.P. news agent told me that a lady fell out of berth—out of Upper 14. I went out in the car to see what it was all about. The conductor says, “Going to take her off at Redding,” and she was groaning.

Q. What was her condition when you saw her?

A. When I first looked in there, she was asleep; then she would wake up. When they taken off, she groaned a whole lot [107] and complained of her arm. That is what I thought, that she had hurt her arm instead of her hip.

Q. Did you try talking with her?

A. No, I didn’t.

Q. Did you help take her off the train at Redding? A. Yes.

Q. Did anyone talk with her while you were helping to take her off?

A. I think they tried to get her name, but whether they did or not I don’t recall now.

Q. After you heard about the accident, did you look at Berth 14? Did you examine it?

A. Yes.

Q. What did you find?

A. Just like I made it up. The curtains were still together, fastened.

(Testimony of L. Rainey.)

Q. They were still fastened, the same as you had made it up? A. Yes.

Q. Were they separated, the front curtains?

A. Right about this far (illustrating) when I looked in.

Q. About six inches or a foot? A. Yes.

Q. Were the buttons unbuttoned?

A. No, they were not.

The Court: What buttons are you talking about?

Mr. Strayer: The protective buttons at the bottom of the upper berth.

A. They were still fastened.

Q. Did you look at the berth again the following morning?

A. Yes. The S. P. man, he and I checked the berth again.

Q. Did you find the condition the next morning different? A. No.

Q. I presume you must have made up the berth the following morning?

A. I put the berths away, yes.

Q. Did you find anything?

A. I found two pairs of shoes and a little capsule.

Q. A yellow capsule? A. Yes.

Q. What did you do with the capsule?

A. I gave it to this S. P. news agent.

Mr. Strayer: I believe that is all.

(Testimony of L. Rainey.)

Cross-Examination

By Mr. Ryan:

Q. Were you talking to Mrs. Teutschman outside the car where the conductor was when she first walked up there? A. Yes.

Q. What was the conversation at that time?

A. About getting on this train, on the wrong train.

Q. Did she make quite a fuss? [109]

A. Well, they generally do.

Q. She finally made such a fuss the conductor decided to let her get on the train?

A. Decided to let her get on the train.

Q. She went into your car?

A. Into my car.

Q. Did she say anything to you after she got in there?

A. Not after she got in. I was still loading passengers up on the outside.

Q. When she was getting in the berth, did she say anything to you? A. Yes.

Q. What did she say?

A. She said she had been to Los Angeles taking treatments; she had spent nine hundred and some dollars and it hadn't done any good and she was sorry she went.

Q. Did she want a lower berth?

A. Yes, they all want lower berths; none available.

(Testimony of L. Rainey.)

Q. Did she ask for a lower berth?

A. I don't recall.

Q. Did she say she had never ridden in an upper berth?

A. Never said that to me.

Q. Did she ever try to get in the berth herself?

A. No, I had a ladder for her. I knew she was crippled.

Q. She did not try to get in without the ladder?

A. No.

Q. You made up the berth for her particularly?

A. Well, I made them all up.

Q. This Upper 14, that was the first berth you made up after she got in the car?

A. Well, I wouldn't say.

Q. You had about half the car made up?

A. Had over half the car made up at Martinez.

Q. As soon as you got 14 made up, you told her to get in?

A. She was ready to go to bed.

Q. She was standing there, waiting for it?

A. No, she was in the ladies' room.

Q. Ordinarily, a Pullman porter pulls the curtains together in the upper berth?

A. Yes.

Q. You tell them to button up inside, ordinarily?

A. No, I don't.

Q. You are instructed to tell them to button, aren't you?

A. No, sir.

Q. As I understand it, this whole thing goes on two berths, adjoining berths; this is 14 and this is part of 16. If this inside curtain was pulled back, it would not affect the lower berth at all?

A. No.

(Testimony of L. Rainey.)

Q. Can pull it back about two-thirds of the way?

A. Yes.

Q. Is there any other protection in the upper berth at all?

A. There is your protection here (indicating). These flaps here is your protection here, all across here (illustrating).

Q. This is connected on this curtain here (illustrating)?

A. This part is connected on this curtain (indicating).

Q. If this curtain is pulled and that is not buttoned, could you fall out of there if you were lying down?

A. No. Have to shove this flap up——

The Court: These flaps, what are the dimensions there? He has not told us.

Q. (By Mr. Ryan): But I say, from here to here (indicating)?

A. You mean from here to here?

Q. Yes. A. Oh, let's see——

Q. How high is it, from here to here?

A. Oh, that is about—you mean from this rod to where the buttons are?

Q. Yes. A. Oh, about six inches.

Q. How high is this whole curtain from the top of the top berth to the bottom of the lower berth?

A. I would say about four feet, probably longer.

Q. How long is the berth? Do you know the length of the berth? Do you know how long the berth is? [112] A. Not exactly.

(Testimony of L. Rainey.)

The Court: I wanted to know how high this is.

Mr. Ryan: That was about six inches, I understand.

Q. The only place these curtains are connected so that the one would affect the other and hang completely to the floor is along the edge of the berth, isn't that right?

A. No—The only thing there now?

Q. That is all one piece, but the connection is along the edge of the berth, isn't it?

A. The connection?

Q. Yes.

A. Yes, just one piece across here.

Q. That is what I understand, but the connection between the upper and lower part of the flap is along the side of the berth, between 12 and 14; no connection between the middle——

A. No, just button here. You buttoned those.

Q. Did Mrs. Teutschman ring for you during the night?

A. No.

Q. Were there any other berths available in this car outside of 14?

A. No.

Q. That was the only berth left?

A. Yes.

Q. You usually—you really made that up especially for her, didn't you? [113]

A. No, I made everything because everything was usually sold.

Q. Quite a bit of traffic at this time?

A. Quite a bit.

(Testimony of L. Rainey.)

Q. It kind of put you out, didn't it, when she insisted on getting on the car?

A. No, it didn't put me out. As long as we had space she could take it as well as anyone else.

Q. She made quite a fuss about it?

A. When she first came up she was talking something about it but I didn't pay very much attention.

Q. Do you think she looked a great deal different than now?

A. Well, I couldn't—I never stare hard enough to tell——

Mr. Strayer: I don't understand.

A. I never stare at my passengers hard enough to tell, then and now, the way they look.

Mr. Strayer: You don't stare at your passengers?

A. That hard, no.

Mr. Ryan: That is all.

Redirect Examination

By Mr. Strayer:

Q. With this type of curtain you had on this car, you don't use any webbing or any other protection? A. No.

Q. The buttoning of these flaps is sufficient protection? A. That is sufficient. [114]

Q. If these flaps are buttoned and the curtains are pulled together, is it possible for a passenger to roll out of the upper berth?

A. If they are not fastened?

(Testimony of L. Rainey.)

Q. No, I mean——

A. If they are fastened?

Q. If they are fastened and pulled together, is it possible to roll out?

A. No, impossible to fall out, for a passenger to.

Q. That would be true whether the buttons on the inside were fastened?

A. They couldn't roll out.

Q. Your testimony is that these flaps were definitely buttoned? A. Yes.

Q. You say Mrs. Teutschman did not try to get in the berth by herself? You recall specifically what your testimony was on that?

A. When she came out of the ladies' room, I had a ladder for her because I saw she was crippled when she got on.

Q. There is testimony by Mr. Fraser, who was in Lower 14, by deposition. His testimony, as I recall, was that he heard Mrs. Teutschman trying to get in the upper berth by herself and hearing you tell her not to do it, that you would get a ladder for her. Do you remember such a conversation as that? A. No, I don't recall. [115]

Q. Pardon? A. I don't recall that.

Mr. Strayer: That is all.

Recross-Examination

By Mr. Ryan:

Q. You remember her saying she did not want an upper berth, that it was all Greek to her, she did not know anything about them?

(Testimony of L. Rainey.)

A. I don't remember anything like that.

Q. It was your duty to button the flaps; if they were not buttoned, you would be called on the carpet?

A. Yes, very much so.

Mr. Ryan: That is all.

(Witness excused.) [116]

ROY D. STEPP

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Do you live in Portland at this time?

A. I live in Oakland, California.

Q. By whom are you employed?

A. The Pullman Company.

Q. Were you so employed in January, 1946?

A. Yes.

Q. Did you get instructions to make an inspection of Car No. 4199, Pullman Car No. 4199?

A. I did, sir.

Q. Did you make an inspection of the car?

A. Yes, sir, I did.

Q. On what date was that?

A. I don't remember the exact date, but I know it was around a couple of years ago.

Q. Was it shortly after January 10, 1946?

A. Yes, somewhere about that time, I judge.

(Testimony of Roy D. Stepp.)

Q. Do you know where the car had come from when you examined it?

A. No, I don't. I was just told the number of the car and what the section was, and to inspect the curtains.

Q. Do you recall what section it was you inspected? [117] A. 14.

Q. What was the purpose of the inspection?

A. To hang these curtains up—to put up the curtain rods and then hang up the curtains; button up the buttons and pull on the curtains to see if the buttons were in good shape; and to inspect the hooks on top of the curtains and so on.

Q. What is the practice on these Pullman cars in regard to the way curtains are kept?

A. Put them underneath the mattress. When they make down the bed, the mattress is already up in the upper berth, and one is put down after the seats are pulled out and then you have one for the upper berth.

Q. Was the curtain found under the mattress? Always is in the same place, is it?

A. Yes. The curtains for 14 are marked in big letters "14."

Q. Ordinarily, then, the section number is on the curtain?

A. Yes, in big black letters. It is sewed right into the curtain, where the porter can see just what curtain it is and so the porter gets the curtain up in the right place.

Q. Do you recall whether these curtains here are marked? A. They are marked.

(Testimony of Roy D. Stepp.)

Q. Did you find any defects in these curtains?

A. No. Put the headboards in and the curtain will cover half of two berths like that (illustrating). The curtain will button into the headboard. That curtain cannot be flopped out. There [118] is a little rod in on this side (indicating).

Q. Did you find any defect at all in these curtains?

A. Couldn't find any defect in these curtains. Hung these curtains up and buttoned them right down the middle, Section 14, and tried them, couldn't find anything wrong with the curtains.

Q. Was anything wrong with any of the equipment around Section 14?

A. No. I tried the rods and all that; couldn't find anything wrong.

Mr. Strayer: That is all.

Mr. Ryan: That is all.

(Witness excused.)

B. A. PAISLEY

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Where is your home, Mr. Paisley?

A. In Seattle or, Vashon Island, rather.

Q. By whom are you employed?

A. The Pullman Company.

(Testimony of B. A. Paisley.)

Q. How long have you worked for the Pullman Company?

A. A little over thirty-seven years.

Q. Were you conductor on Car 4199, the car on which Mrs. Teutschman was riding when she was injured?

A. Yes, sir.

Q. Where did you board that car?

A. At Oakland Pier.

Q. Oakland Pier?

A. Yes.

Q. Where did the car come from before that?

A. The whole train starts from the pier. The car was right out of the yard.

Q. When cars are brought out of the yard, had they been in the yard immediately before that?

A. They go to the yard for cleaning and servicing. Everything is put away—— [121]

Q. Can you tell me whether Car 4199 had been used immediately before you took it out of Oakland Pier this day?

A. Not that day, no; comes right from the yard after it has been cleaned.

Q. It was cleaned as soon as it was set there?

A. Oh, yes.

Q. I take it, when it comes out of the yard the berths are not made up. When it comes out of the yard, the berths are not made up?

A. No. They had a practice of making the side of the car away from the station, making the berths on that side of the car.

Q. Who was your porter on this car?

A. Rainey.

(Testimony of B. A. Paisley.)

Q. Did he start making the berths as soon as you got out of the station? A. Oh, yes.

Q. What time did you leave the Oakland station? A. 7:15.

Q. Evening?

A. Evening of January 9th, yes.

Q. What train number was this? A. 18.

Q. Was there another train, Train No. 20, following you? A. Yes.

Q. How far behind you was that running? [121]

A. A little over two hours. I am not sure of the time they left there.

Q. An hour? A. About two hours or more.

Q. Do you know about what time you arrived at Martinez?

A. I would say about 8:30 or 8:40, something like that.

Q. By that time what was the situation regarding the making up of the berths of Car No. 4199?

A. Practically all of the berths were made up; maybe one or two sections were not made yet.

Q. What is the situation as to whether you had any lower berths available?

A. Everything was taken except one berth.

Q. So, as a practical matter, you had no lower berths available? A. Nothing available.

Q. Have you recently checked your working diagram of that train?

A. Yes, I have seen the diagram.

Q. Look at Defendant's Pre-Trial Exhibit No. 9 and tell me if that is the diagram of Car 4199 for that date? A. Yes, that is the one I used.

(Testimony of B. A. Paisley.)

Q. Pardon? A. That is the one I used.

Q. Does that disclose there were no lowers available at Martinez on that day?

A. There was nothing vacant there at all. [122]

Mr. Strayer: I offer the exhibit in evidence.

Mr. Ryan: No objection.

The Court: Admitted.

(Pullman car record, Car 4199, thereupon received in evidence and marked Defendant's Exhibit No. 9.)

Q. (By Mr. Strayer): Where did you first see Mrs. Teutschman on that night?

A. I saw her shortly after she left the station, coming towards the Pullman.

Q. How far away was she when you first saw her? A. Oh, about three or four car lengths.

Q. As she got down towards you, what can you say about her appearance?

A. Well, she was limping. She carried an old shopping bag and a violin case. That is as much as I can say about her appearance at this time.

Q. Did she come up to you and talk to you?

A. She came up with the other passengers. The other passengers were boarding the train—quite a few got on there that night. When she came up there, I asked her for her ticket, to see her ticket. She showed a ticket, I think, for Train No. 20, and I told her her reservation was for that train, but she complained about having to go back to the station, so I told the porter, as long as we had space, and to save her going clear [123] back to the station, to take care of her.

(Testimony of B. A. Paisley.)

Q. Did you look at the ticket? A. Yes.

Q. Was it for an upper or a lower?

A. Upper 14.

Q. On Train No. 18? A. On No. 20.

Q. Your train was No. 18? A. Yes.

Q. Is it customary to allow a passenger to ride on a different train?

A. We are not permitted to accept tickets on other trains like that.

Q. How did you happen to do it in this case?

A. I took pity on her, on account of her condition and, as long as I had space, I thought I would take care of her. I had a redcap at Martinez to notify the conductor on the other train to cancel the space.

Q. When you say you took pity, I take it ordinarily you would not do it. Why did you do it in this particular case?

A. Well, she was rather poorly dressed and crippled. I thought it was the thing to do.

Q. Did she say anything to you that led you to believe you ought to try to accommodate her?

A. She complained about going clear back to the station again. [124]

Q. How far was it to the station?

A. At least six car lengths.

Q. When you say she was limping, was she limping hard or moderately? A. Quite bad.

Q. Did she appear to you to be in any pain?

A. No.

(Testimony of B. A. Paisley.)

Q. You said you agreed to give her an upper in your car. What instructions did you give about getting her an upper?

A. You mean to the porter?

Q. Yes.

A. I told him "Upper 14 is vacant. Make that up for her and put her in there."

Q. Did you help her on the train?

A. No, I don't think so.

Q. Did you have any conversation with her while the porter was making up the berth?

A. Yes. She was standing at the end of the aisle. She asked me for some water, so I got her a cup of water. She wanted to take some medicine. She took a large yellow capsule with the water I had given her and drank the water there.

Q. She took a capsule while you were matching?

A. While I was standing there, talking to her.

Q. Did she take anything more? A. No.

Q. She did not tell you what the capsule was?

A. No. I didn't inquire. It was none of my business.

Q. You were on the inside of the car, then?

A. Yes.

Q. What can you say about her appearance?

A. Well, I first had the impression that she had been drinking, but after I talked to her I knew that was not the case. She gave me that impression at first.

(Testimony of B. A. Paisley.)

Q. When you got close enough to her, were you able to smell any liquor?

A. No. That is why I say I knew she she had not been drinking.

Q. What was it that gave you that impression?

A. Just her actions, acting like a person who had been drinking.

Q. What was done as soon as the berth was made up?

A. The porter got a ladder and put her up.

Q. You were there when that was done?

A. Yes.

Q. Were you there when the porter was making the berth?

A. Standing at the end of the ladder. He was making the berth at that time.

Q. You heard Mrs. Teutschman's testimony that there were no curtains on the berth.

A. That would be impossible.

Q. Why would it be impossible?

A. Because the berth cannot be made up without hanging the [126] curtains up.

Q. In other words, her testimony that there were no curtains to stop her would not be physically possible? A. No.

Q. Do you base that on anything else? Did you see what the porter did do in regard to making the berth?

A. I just saw he was making the berth.

Q. Did you see whether he put the curtains on?

A. The curtains were already on one of the berths, because the lower berth was made.

(Testimony of B. A. Paisley.)

Q. Do you know whether he buttoned the flaps on the curtains? A. Yes.

Q. The protective flaps?

A. Yes, I know that.

Q. Did you see him do it?

A. I looked at the berth afterwards and I know they were buttoned.

Q. You were there at the time he helped the lady into the berth?

A. I was not. I was at the other end of the car, a 16-section car.

Q. Do you know whether the porter pulled the curtain when he put her in? A. Yes.

Q. Did you see him do it?

A. I went back there shortly after that and the curtains were [127] closed.

Q. Did you have occasion to notice the berth later on that evening?

A. Yes. I came through there—yes; every time I went through the car.

Q. What was the next thing you noticed?

A. At one time I came through there she had her foot sticking out of the berth.

Q. Sticking out through the curtain?

A. Yes.

Q. What did you do?

A. I just shoved it back in the berth. She didn't waken. I pulled the curtains together again.

Q. Were the curtains shoved apart when this happened? A. Just a little bit.

(Testimony of B. A. Paisley.)

Q. Just enough for a foot to come through?

A. Yes.

Q. Did you notice whether the flaps forming the curtains were buttoned?

A. They were.

Q. You pulled the curtain back together?

A. I spoke to her but she did not respond. I pulled the curtain together and left.

Q. Did anything else happen which called your attention to that berth that evening? [128]

A. Well, the lady rang the bell—I was in the car; was in the smoking room. I answered the bell. She asked for some water. She said she wanted to take some medicine.

Q. Her testimony that the porter answered it is incorrect, then?

A. The porter had to guard two tourist cars. The porter was on guard in the other car. I was in the smoking room of this car, so I answered the bell rather than to wait for him to come in there.

Q. When you got down to Mrs. Teutschman's berth, what was the condition of the curtains then?

A. They were closed.

Q. What did you do?

A. I asked her if there was something she wanted and she said she wanted some water; she wanted to take some medicine, so I got her a cup of water and handed it up to her, but I didn't see—the curtains were closed.

Q. You recall her saying that she wanted to take some medicine?

A. Yes.

(Testimony of B. A. Paisley.)

Q. Did you open the curtain when you got her water for her?

A. No, just handed the cup of water up.

Q. When you left the berth, were the curtains closed or open? A. They were closed.

Q. When was your attention next attracted to that berth?

A. After she claims to have fallen out of the berth. [129]

Q. How did you happen to find out about it?

A. I was back in the train, and a gentleman came back for me.

Q. Mr. Holland, news agent, came back and got you? A. Yes.

Q. When you came back to this car, where was Mrs. Teutschman? A. In the dressing room.

Q. The ladies' dressing room?

A. The ladies' dressing room.

Q. What can you say about her appearance then?

A. She was fully dressed and had her stockings on; was sitting in a chair in the dressing room; she was moaning a little bit. She said she had been hurt; she had hurt her right leg. Her dress was up about this far (indicating); her stockings down to her ankle almost; couldn't see any bruises on her leg anywhere.

Q. Did you try to talk to her?

A. Yes. She seemed to be in a stupor.

Q. You could not get anything out of her?

A. No.

(Testimony of B. A. Paisley.)

Q. Did you try to find out how she got hurt?

A. That is all I could find.

Q. What was done with her?

A. Well, we got the train conductor and tried to get a doctor at Redding.

Q. Where did you keep her? In what room?

A. In the dressing room. As soon as I could, I called the passenger agent and, as soon as he got out of the berth, I put her in the passenger agent's berth.

Q. And then she was there the rest of the time until you got to Redding? A. Yes.

Q. Did you see Mrs. Teutschman during that time until you got to Redding?

A. Yes. I was there practically all the time.

Q. What condition was she in during that time?

A. The minute she hit the berth, she was sound asleep.

Q. Did you help take her off the train at Redding? A. Yes.

Q. Have you seen any more of her since then until today? A. Not until today.

Q. Did you help get her baggage together and put it off at Redding? A. No.

Q. After you heard of this fall Mrs. Teutschman had taken, did you inspect Upper 14? A. Yes.

Q. What did you find?

A. As soon as we left Redding, I went in and looked at the berth. The curtains were all buttoned up and everything.

(Testimony of B. A. Paisley.)

Q. Were the curtains spread any? [131]

A. A short distance, yes.

Q. How far apart were they?

A. I would say twelve or fourteen inches.

Q. In the position you found the curtains, after you heard about the fall, would it have been possible for anyone to have fallen out of the berth?

A. No, I don't think they could. Understand the way these curtains are fastened. There is a rod goes across the berth. There is a division about this far (indicating) from the end of the rod and it is impossible to slip that curtain beyond that division. It cannot be fully opened.

Q. On Exhibit No. 8, can you point out what you mean?

A. Right here, at the end here (indicating), there is a division right in her and it is impossible to slip this clear back.

Q. How far can you spread these upper curtains? A. Oh, about this far (illustrating).

Q. About how far would that be?

A. I would say, oh, probably fourteen inches on each curtain.

The Court: There are buttons out here?

A. Inside buttons.

The Court: How many?

A. There are four or five or six buttons there, inside.

(Testimony of B. A. Paisley.)

Q. (By Mr. Strayer): Your testimony is it would have been impossible to spread these curtains, buttoned as they were, more than twenty-five inches, say? [132]

A. No. I have been sleeping in upper berths for twenty years and I always have a hard time getting in there.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Ryan:

Q: Did you have any conversation with her outside the train?

A. No, only just about the ticket; explained to her the ticket was on the following train.

Q. Did she say anything about a lower berth?

A. Every time, when they show up with an upper berth—with a ticket for an upper berth—they want a lower.

Q. Did she make quite a fuss?

A. Not more than usual.

Q. You first inspected the berth after Mrs. Teutschman got off the car? A. Yes.

Q. At that time, it was in order as far as distances are concerned; about fourteen inches apart?

A. Just the way it should have been.

Q. This berth was not made up at the time she got on the train?

A. The lower was, but not the upper.

Q. The curtains were back on the upper?

A. Yes.

(Testimony of B. A. Paisley.)

Q. I understood Mr. Rainey to testify that you could pull the lower back this far (indicating) but the upper could go all the [133] way back?

A. This rod comes in here (illustrating). It is impossible to go any further.

Q. There is nothing on the rod to stop it?

A. No, not the upper.

Q. On the lower, there is? A. Yes.

Q. If these buttons were properly buttoned along the bottom here (indicating), would it be possible for her to fall out, if she was lying flat in bed? A. I don't see how it would be.

Mr. Ryan: That is all.

(Witness excused.)

J. G. HOLLAND

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. What is your full name?

A. Jesse G. Holland.

Q. Where do you live?

A. Live at Clovis, California.

Q. What is your occupation at the present time?

A. I was news agent on the train. At the present time?

Q. Yes.

A. I have a hatchery and feed store.

(Testimony of J. G. Holland.)

Q. In January, 1946, were you employed on the Southern Pacific train? A. Yes.

Q. By whom were you employed?

A. Southern Pacific.

Q. Were you working on the same car that Mrs. Teutschman was injured on?

A. I was working on the same train, No. 18.

Q. Did you have a berth on that same train?

A. Yes.

Q. Along later in the night of January 9, 1946, or the early morning of January 10, 1946, did you have occasion to get out [135] of your berth to go anywhere?

A. Yes, had to get up and go to the men's room at 4 o'clock.

Q. As you came back, did you go through Car 4199?

A. As I came out—the men's room is right down to the end where my berth was. My berth was No. 5. When I came out of the men's room, I happened to look down to the other end of the car and I see this lady lying on the floor.

Q. Lying in the aisle?

A. Lying in the aisle, yes.

Q. What position was she in, in the aisle?

A. She was kind of laying down on her stomach.

Q. What was she doing, if she was doing anything?

A. She was just laying there. I went up and asked—you want me to tell all?

(Testimony of J. G. Holland.)

Q. Yes.

A. I went up and asked her if she fell out of the berth and all she would do was just moan. I couldn't get nothing out of her. She just said, "Huh," or something like that. I ran for the porter, to tell the porter to come quick. I said, "Somebody—some lady fell out of her berth."

Q. Tell us where you found her? Was she lying below Upper 14? A. Right below, yes.

Q. When you found her there, did you notice the position that the curtains then were in, 14?

A. I sure did. [136]

Q. What position were they in?

A. They were opened something like that (illustrating), just room enough for a person to get their feet out and go feet first. That is the way she—

Q. Were they open far enough so that a person could have rolled out? A. No.

Q. Did you look at them to see whether or not the protective flaps were fastened?

A. I didn't look to see whether they were fastened or not, but I did look and seen how far they were apart.

Q. Did you help take Mrs. Teutschman into the ladies' room?

A. I watched the porter. He lifted her up and tried to take—she couldn't stand on her feet and he had to carry her and he wanted to know—he said, "What will I do with her?" I guess he was a little excited. I said, "Take her to the ladies' room and sit her on a chair," and he said he would go and

(Testimony of J. G. Holland.)

get the Pullman conductor. I said, "No, you won't. I will go. You are going to stay here with this woman," and I went for the Pullman conductor.

Q. Did you go back in after that? A. No.

Q. Did you see any more of Mrs. Teutschman after that?

A. No. I got the Pullman conductor and they helped her into the ladies' room. When I got the Pullman conductor, I went to [137] my berth. I had to work hard and I had to have my rest.

Q. Were you inside the ladies' room while she was? A. Yes.

Q. Did anyone, while you were there, try to talk with her?

A. The porter and I both tried to talk with her, but we couldn't.

Q. What was her appearance?

A. I thought she was intoxicated. To tell the truth, I thought that she was.

Q. You had not seen her earlier that day?

A. No. I was up in the chair cars.

Mr. Strayer: That is all.

Cross-Examination

By Mr. Ryan:

Q. Did you smell any liquor on her breath?

A. I can't smell a thing. I couldn't have told you if she had——

Q. The porter came out about the same time you were out there in the aisle?

A. How is that?

(Testimony of J. G. Holland.)

Q. The porter came out at the time you were out in the aisle, helping her?

A. I went for the porter. He was not in there. I went for him.

Q. He came out while she was still on the floor?

A. Yes.

Q. He testified he didn't see her until she was in the berth? A. This is a different porter.

Mr. Ryan: That is all.

Mr. Strayer: That is all.

(Witness excused.)

LAURINE K. SMITH

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name? A. Laurine K. Smith.

Q. You live in Los Angeles?

A. That is true?

Q. Married? A. Yes.

Q. Do you work? Are you employed?

A. Working part time.

Q. Whom do you work for?

A. Pacific Motor Truck.

Q. Were you formerly in the employ of the Southern Pacific Company? [139] A. Yes.

(Testimony of Laurine K. Smith.)

Q. Were you working for the Southern Pacific Company in January, 1946? A. Yes.

Q. In what capacity?

A. I was a passenger aid.

Q. Were you, by any chance, passenger aid on the train on which Mrs. Teutschman was riding when she had her accident? A. Yes, I was.

Q. Do you remember the lady?

A. Yes, I do.

Q. Where was your berth on that train?

A. There was one berth between me and 14. I was 16.

Q. You were in the same car? A. Yes.

Q. When did Mrs. Teutschman first come to your attention?

A. At between 1 and 2 in the morning. I felt my berth curtain shake and I think my shoulder, too, and the porter said a lady had fallen from the berth.

Q. You had already retired?

A. Yes, I was asleep.

Q. Did you get up, then, and put on your clothes? A. Put on a robe.

Q. Where was Mrs. Teutschman when you got up? [140] A. In the ladies' room.

Q. Who was with her?

A. One of the conductors, I think.

Q. Was Mr. Paisley there?

A. Yes, I saw Mr. Paisley.

(Testimony of Laurine K. Smith.)

Q. Will you tell us about how Mrs. Teutschman appeared? Will you tell us about Mrs. Teutschman's appearance when you first saw her?

A. My impression was that she was dressed, but there was some nightclothes over her dress; I believe.

Q. How was she dressed? Can you tell, Mrs. Smith?

A. Her stockings were hanging around her legs and she had on a dark skirt, a wool skirt, I believe. That is all I remember.

Q. Did she have any kind of a jacket or blouse on?

A. Yes, she did.

Q. What kind of a blouse was it?

A. It had red in it, I believe.

Q. What was her physical condition, as near as you can tell?

A. My impression was that she had been hurt but was very sleepy—a combination.

Q. Do you remember talking with her?

A. Yes, sir, I do.

Q. What conversation did you have?

A. It was impossible—she couldn't seem to understand me or answer. [141]

Q. Did you make any effort to find out where she was hurt or how badly she was hurt?

A. Yes, sir, I did.

Q. What success did you have with that?

A. My impression was she had either hurt her arm—it was either her arm or leg on the right side. I asked her—I asked about having her put into my berth where she could be stretched out.

(Testimony of Laurine K. Smith.)

Q. I think the testimony is she was taken off the train at Redding. Were you with her up until the time she was taken off the train?

A. Most of the time, but, after I had her in the berth, then I asked her to be watched until I dressed myself. I took my clothes from the hammock of the berth and went into the ladies' room and dressed.

Q. Did you stay with her most of the time—the rest of the time? A. Yes, sir, I did.

Q. Did you have any conversation with her?

A. I attempted to. We tried to get her name, but it was impossible.

Q. Did you get any information from her at all?

A. No, I didn't.

Q. What is the fact as to whether she was asleep or awake during that time?

A. When I touched her, she would moan a little, as if she was in pain; but when I would let her alone, she would drop into a deep sleep.

Q. Did that situation continue up to the time they took her off the train? A. It did.

Q. Did you get off the train with her at Redding? A. Yes.

Q. Did you take her to the hospital at Redding?

A. Yes, I believe I called the hospital.

Q. What did you do?

A. I lifted her into the landing and said we would have to have two nurses and then in a while later they came out and put her on a wheelchair and lifted it over the steps—up the steps—and put her in a room.

(Testimony of Laurine K. Smith.)

Q. Take her baggage with you? A. Yes.

Q. What did her baggage consist of?

A. She had a shopping bag and a violin case and her purse and hat.

Q. When you got to the hospital, did you and the nurse make an inventory of the contents of the luggage?

A. Yes, I believe that was done.

Q. What was in the violin case?

A. Odds and ends of clothing, underwear. [143]

Q. Was there a violin?

A. I am sorry. I don't remember seeing any violin.

Q. Find anything in the nature of medicine in anything there?

A. Yes, the nurse did, in my presence.

Q. What was it? What kind of medicine was it?

A. Well, I am not familiar with medicines, but it was a bottle of capsules—a bottle with capsules in it.

Q. Yellow capsules? A. Yes.

Q. Did the nurse make any inquiry of you as to whether she had been taking medicine?

A. Yes, they did.

Q. What did they inquire?

A. I don't remember their exact words, but it was to the effect: Did I give her something or had she taken something herself?

Q. Was she apparently still asleep at this time?

A. She dropped off at intervals, yes.

(Testimony of Laurine K. Smith.)

Q. What condition was her clothing?

A. Disheveled.

Q. Pardon?

A. It was wrinkled, I would say.

Q. Speaking about the time that she was in the hospital, after her clothing had been removed, do you know what condition it was in?

A. Soiled. [144]

Q. What condition was she in?

A. She was soiled, too.

Q. Did you notice a sore on her leg?

A. Yes.

Q. Whereabouts on the leg?

A. On her thigh, almost above the groin.

Q. What sort of a sore was it?

A. It was a very deep sore, not so long as deep, into her leg. It was quite a bad looking sore.

Q. Was it discharging at the time you saw it?

A. It was raw.

Q. It was not bleeding? A. No.

Q. Do you know what it was?

A. I didn't know. The nurse told me. I didn't know until the nurse told me.

Q. Did you make a further effort to find out what Mrs. Teutschman's name was?

A. Yes, and we succeeded.

Q. How did you get the name?

A. Well, I never did have anything but the last name. I think we were able to get that from her due to the fact that she had been visiting this sister in Los Angeles and was going to Portland.

(Testimony of Laurine K. Smith.)

Q. Did you give her name to the conductor?

A. Yes, I wired it to him.

Q. How did you do that, by telegraph?

A. Yes.

Q. Let me ask you: While you were still on the train, after you heard about this accident, did you have occasion to look to see if there were curtains on Upper 14?

A. Yes, sir, I did.

Q. Did you look particularly?

A. I looked within, I would say, six feet of the upper curtains.

Q. What is the fact? Were there curtains on the berth?

A. Yes, there were.

Q. How far apart were they pulled?

A. About twelve, oh, maybe fourteen inches.

Q. You don't know, I suppose, whether they were fastened at the bottom?

A. No.

Q. Have you ever had experience being around people who were or had been taking a drug such as nembutal?

A. Not except at time of operations or something like that.

Q. What could you say, from your observation of Mrs. Teutschman? Did she have the appearance of one who had taken drugs of that kind?

A. Yes, she definitely had.

Mr. Strayer: I think that is all. [146]

(Testimony of Laurine K. Smith.)

Cross-Examination

By Mr. Ryan:

Q. Are you acquainted with the effects of that kind of a drug?

A. I have taken sodium amytal myself, which has the same sedative effect.

Q. Just makes people sleep?

A. That is right, a dopey sort of sleep.

Q. She did not have her shoes on when you saw her?

A. No, I don't believe she did. I would hesitate to say. I am sorry.

Q. The porter says that he found the shoes. You don't recall having seen her shoes?

A. I don't recall.

Q. Her clothes were all wrinkled up, like she had slept in them?

A. Yes.

Q. Her stockings were not pulled up?

A. No, they were not.

Q. You were employed by the Southern Pacific at that time?

A. Yes, I was.

Q. They provide a woman like yourself on every train?

A. It is for the service of babies.

Q. Did you get back to take the same train?

A. No, I didn't.

Q. You stayed at Redding?

A. Yes, I did. [147]

Mr. Ryan: That is all.

(Witness excused.)

Mr. Strayer: The defendant rests.

Defendant rests.

Plaintiff's Rebuttal Testimony

MRS. MAGGIE MAE TEUTSCHMAN

the plaintiff herein, having been previously duly sworn, was recalled in her own behalf, in rebuttal, and was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. You had been traveling all day, had you not?

A. I had, since 8 o'clock in the morning.

Q. You had been sitting down all that time?

A. Yes.

Q. Had you done any drinking that day?

A. Never taken a drop of nothing in my life.

Q. You do not drink at all?

A. Never drank or smoked or used any kind of drugs, never in my life, never.

Q. How were you dressed? [148]

A. I was dressed exactly the same as I am right now.

Q. Did you have your clothes off at all that night?

A. I didn't take off my clothes—I took off my slippers and hat, that is all. I had a brown fur around my neck. I didn't even take that off.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. You had the same suit on you now have on?

A. I did. Put it on at my sister's the morning when I left there to catch the train.

(Testimony of Mrs. Maggie Mae Teutschman.)

Q. What color is that suit?

A. It is black, if I can see straight.

Q. You did not have a red jacket on?

A. I did not.

Q. Nor a dark skirt?

A. I did not. I had on the same suit I have got on now, with a brown fur on it.

Q. Didn't you say in your deposition you had a brown suit on? A. No.

Q. I will call your attention to Page 20 of your deposition:

“Q. Did you wear a red dress this night?

“A. No, I didn't. I had on a brown suit.”

A. I didn't have on nothing red.

Q. Did you testify you had on a brown suit?

A. Not that I know of.

Q. Do you deny that you so testified in your deposition?

A. I had a brown suit with me and I had a whole lot of slippers with me. I had on a brown fur.

Q. Do you remember testifying you had on a brown suit? A. No.

Q. Did you or did you not so testify?

A. Not that I know of.

Mr. Strayer: I offer the deposition in evidence, your Honor, for the purpose of proving what the plaintiff's testimony was in that regard.

The Court: Admitted.

(Testimony of Mrs. Maggie Mae Teutschman.)

(Adverse party deposition of Maggie Mae Teutschman, plaintiff, thereupon received in evidence and marked Defendant's Exhibit No. 13.)

Mr. Strayer: That is all.

Redirect Examination

By Mr. Ryan:

Q. Did you make any statement to Dr. McVicker about the accident?

A. I never did talk to Dr. McVicker; never talked to him in my life. I never made any statement. He didn't ask me no questions.

Mr. Ryan: That is all.

(Witness excused.)

(Testimony closed.) [150]

Defendant's Motion for Dismissal

Mr. Strayer: For the purpose of the record I want to move that plaintiff's case be dismissed on the ground that under the facts and the law the plaintiff is not entitled to any relief.

The Court: Motion denied.

(Argument of counsel) [151½]

Reporter's Certificate

I, Ira G. Holcomb, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on the 9th day of September, A.D. 1947, I reported in shorthand certain proceedings occurring upon the trial of the above-entitled cause; that I thereafter caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 150, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated this 3rd day of December, A.D. 1947.

IRA G. HOLCOMB,
Court Reporter.

DEFENDANT'S EXHIBIT NO. 11

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,

Defendants.

DEPOSITION OF DR. H. R. McVICKER

Taken in Redding, California,
Monday, August 4, 1947

Be It Remembered, That pursuant to stipulation on file herein and on Monday, the 4th day of August, 1947, commencing at the hour of eleven o'clock a.m. of said day, before me, Frank W. Shuman, a Notary Public in and for the County of Shasta, State of California, in the Superior Court Room of Shasta County at Redding, California, personally appeared Dr. H. R. McVicker, the witness named in said stipulation. who, being by me first duly sworn, was then and there examined and interrogated by Anthony Telay, Jr., counsel for plaintiff, and Richard Devers, counsel for defendants.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

It was stipulated that the Notary Public need not remain present during the taking of the said deposition, but that the same should have the same force and effect as if he were personally present at all times.

Deposition of

DR. H. R. McVICKER

a witness for defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Devers:

Q. Will you please state your full name?

A. Harry R. McVicker.

Q. And what is your business?

A. Physician and surgeon.

Q. Are you licensed to practice medicine in California?

A. Yes, sir, and in Shasta County.

Q. And where is your office?

A. 1726 Market Street, Redding.

Q. Do you recall treating a lady by the name of Maggie Mae Teutschman in Redding in January of 1946?

A. Yes sir.

Q. How did you happen to be called into the case?

A. Apparently because I am district physician and surgeon for the Southern Pacific Company.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

Q. Where did you first see Mrs. Teutschman?

A. Memorial Hospital, Redding.

Q. And do you remember the day in January?

A. The tenth.

Q. And what hour was she admitted to the hospital?

A. About two-thirty, a.m.

Q. What time did you first see her?

A. Around nine o'clock in the morning.

Q. Will you describe her complaints and her condition?

A. She was complaining of pain in her right upper leg and thigh.

Q. Did she give you an explanation of the cause of her pain.

A. Yes.

Q. What did she say?

A. Said that she woke up and started to turn over in the Pullman berth and fell out of bed, or fell out of the berth, rather, and said that she caught the rail and let herself down easy.

Q. Did she say when that occurred?

A. The way I understood it—I don't think she told me exactly, but the way I understood it it was just as the train had stopped here in Redding.

Q. On the 10th of January, 1946?

A. Yes, about two o'clock in the morning.

Q. Did you observe any other condition?

A. Well, the nurses—may I state first what the nurses said?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Well, not as yet.

A. Well, that's all right. When I saw her that morning she seemed to be still very sleepy and she talked incoherently and didn't seem to know what was going on except she had some pain there and she slept most of the time until three o'clock that afternoon and that is the first time they gave her anything for a pain, three o'clock in the afternoon when she had an eighth grain of morphine.

Q. And you saw her approximately eight-thirty on the morning of the 10th?

A. Approximately nine o'clock.

Q. And she at that time was incoherent?

A. Yes, and very drowsy.

Q. And she slept from that time——

Mr. Telay: I think you are leading with that, Mr. Devers.

Mr. Devers: He has already testified but I will change the form of my question.

Q. I think this is repeating your answer, but I understood she slept from the time you first saw her, for how long?

A. She slept most of the time, from the time she entered the hospital until three o'clock that afternoon.

Q. What in your opinion was the cause of her drowsiness and numbed condition that you described?

A. The taking of sleeping capsules, or capsules which she admitted taking, a nembutal capsule; she

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

had a bottle containing several grain and a half nembutal capsules with her.

Q. Did you see the bottle? A. Yes, I did.

Q. And there were how many capsules in it?

A. I don't remember; I don't believe I counted them. I think there was about a dozen.

Q. You stated that the capsules which were a grain and a half nembutal——

Mr. Telay: I don't believe he stated a grain and a half.

A. Yes, they were.

Q. (By Mr. Devers): Are there different degrees of strength of nembutal?

A. Yes, a grain and a half, three-quarters of a grain and three-eighths of a grain.

Q. Well then I take it that the grain and a half is the strongest of the capsules normally used; is that correct? A. That's right.

Q. What is nembutal?

A. It is a sleeping powder.

Q. Is it a drug? A. Yes.

Q. Does the drug normally have a different effect upon different people depending upon their condition or their possible use of the drug, past use of the drug? A. Yes.

Q. If a person, normal in all respects, were to take two capsules within a period of two or two and a half hours, of the grain and a half nembutal, that would be the normal effects?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. Well, it would be that they are more or less under a hypnotic effect and be very hard to awake; they would sleep.

Q. How long a period of time would it take for the effect of two capsules to wear off so that a person would be normal in his senses?

A. Six to eight hours. The manufacturer claims six hours.

Q. From the condition of Mrs. Teutschman as you observed it, would you say that when you first saw her at eight-thirty her mental faculties were numbed?

A. Yes sir.

Q. In your opinion was her sleep, or sleeping from the time you first saw her to the time I think three or three-thirty in the afternoon when she awakened, induced by the sleeping drugs?

A. I think it was.

Q. How did you treat Mrs. Teutschman? What did you do for her?

A. I placed her right leg in a basket, metal splint.

Q. Did you take x-rays?

A. Yes sir, I had the hospital take them.

Q. The hospital took them?

A. Yes.

Q. At your request?

A. Yes.

Q. Did you examine the x-rays?

A. I did.

Q. And the x-rays, are they now available?

A. No sir.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Do you have any idea what has happened to them?

A. My idea is that probably Doctor Madoff, an osteopathic physician and surgeon who was here at that time, and Miss Teutschman suggested that since I was district surgeon for the Southern Pacific that she call a physician of her own choosing and that was agreeable with me, and so I turned her—turned her over to Doctor Madoff and probably he has the x-rays.

Q. But you don't know.

A. I don't know, and Doctor Madoff has on his office a sign on the entrance "Closed temporarily"—he has been gone about three months. I don't know where he is.

Q. The hospital has been unable to find them?

A. They are not at the hospital.

Q. And I take it you made a search of your office records and they are not there?

A. Yes sir.

Q. Can you state what the x-rays did show?

A. Showed a spiral fracture of the right femur, also an osteomyelitis of the left femur with extra bony decalcification and decomposition.

Q. Did you discuss the osteomyelitis with the patient, Mrs. Teutschman, concerning the history of it?

A. Yes.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Did she give you any statement as to that condition?

A. I don't recall very clearly but she had been treated for it before, she told me, but I don't recall where she had been treated.

Q. Was there any evidence of the osteomyelitic condition on the surface of the body?

A. Yes, there were two draining fistulas, one near the fold of the buttocks and one on the anterior surface, as I recall it.

Q. From your examination of the x-rays and the draining fistulas, could you state in your opinion how long the condition of osteomyelitis has been in existence?

A. I would in my opinion—it would have been several years; I couldn't say how long.

Q. Did she make any statement to you about the duration of that condition?

A. If she did I don't recall her answer.

Q. What is osteomyelitis?

A. It is an infection of the bone.

Q. What effect does it have upon the bone?

A. It destroys it and weakens it.

Q. Would you say that condition of osteomyelitis had any relation or had any effect on the break that you observed in the x-rays?

A. It would make the bone much weaker and much more easily broken than a normal bone.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. So that the leg wouldn't withstand the normal jar that a bone without that osteomyelitic condition could stand; is that correct?

A. Yes sir.

Q. If the osteomyelitis had been in existence for a period of say twelve years, in your opinion would a slight fall break the leg, or a slight jar?

A. Yes sir.

Q. You stated that Mrs. Teutschman had a bottle containing several capsules of one and a half grain nembutal. Do you know what happened to that bottle?

A. So far as I know it was returned to her when she left for home; she had taken it with her, as far as I know. That is what is usually done with any medicine a patient brings with them to the hospital.

Q. As I recall, Doctor, I asked you how you treated Mrs. Teutschman; I believe you stated that you put splints on the leg.

A. A splint.

Q. Did you give her any other treatment?

A. Diathermy and injections of morphine, one-eighth grain as necessary for pain.

Q. You also stated that you were dismissed by Mrs. Teutschman and that she employed her own doctor. Do you remember the date on which you were dismissed? A. The twelfth.

Q. When did the patient leave the hospital, do you know? A. The thirteenth of January.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. I think you also stated, Doctor, that Mrs. Teutschman told you that she had taken one nembutal tablet. Do you recall when your conversation was with her, whether that conversation took place when you first saw her at eight-thirty on the morning of the tenth or whether it took place after she awakened?

A. It took place in the afternoon.

Q. Did you have any conversation with her when you first saw her?

A. Yes, I asked her questions but she didn't seem to be able to answer except that she had fallen.

Q. Her incoherent condition as to which you testified when you first saw her at eight-thirty o'clock, could that be any possible chance be the result of simply a broken leg?

A. I don't believe so; I don't see how it could be.

Mr. Devers: I believe that is all for direct.

Cross-Examination

By Mr. Telay:

Q. Doctor, I believe you testified on direct examination that you first saw Mrs. Teutschman at nine o'clock the morning of January eleventh.

A. No, the tenth, at approximately nine o'clock.

Q. And then she had been brought in to the hospital that morning?

A. About two-thirty.

Q. You did not see her when she was brought in to the hospital?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. That's right. The nurses called me on the phone and described her condition and said that she was resting and I told them to call me if they needed anything and she was sleeping so they didn't call me until I went there around nine o'clock.

Q. Did your reports transmitted to you from the hospital concerning your patient's condition indicate that she was in any pain?

A. Didn't seem that she was in so much pain, as when she was first brought in, she was noisy and incoherent in her speech, according to the nurses.

Q. Would you be able to know whether or not Mrs. Teutschman had been administered at the hospital any drug or sedative, any pain killer?

A. I know that she was not until about three o'clock in the afternoon of the tenth.

Q. Would it be beyond the realm of possibility that she received any drug in the hospital without your knowledge?

A. It should be. As you probably know they are supposed to write everything on the chart, any medication that was given, and there was nothing reported until about three o'clock in the afternoon of the tenth.

Q. Then you called upon her at the hospital at nine o'clock the morning of January tenth. You stated that her condition at that time was numb, she appeared to be in a numbed condition.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. No, I stated that she seemed to be under the influence of a sedative; she was not able to talk coherently and answer questions. I didn't say that she was numbed.

Q. I am sorry, I thought you made that statement. Did you question her at any length at that time?

A. No sir. I asked her a few questions and she seemed so drowsy I thought the best thing to do was to let her sleep and went back that afternoon.

Q. You formed the opinion at that time that she was under the influence of some sedative?

A. Yes, I did.

Q. Let me ask you, Doctor, would it be possible for a person the age of sixty-two such as Mrs. Teutschman here, to give that appearance by reason of shock and physical exhaustion without having taken any drug?

A. I don't believe so, even though she did have a fracture of the femur. She said that she started to fall, grabbed the rod and let herself down very easy.

Q. When did she tell you that, Doctor?

A. She told me that on the afternoon of the tenth.

Q. She told you she grabbed the rod and let herself down very easily?

A. Yes. I wouldn't say "very easily"; I think that is the word she used, she said "easily."

Q. You are quite sure she grabbed the rod and let herself down?

A. Yes sir.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

Q. Now getting back to this question of her condition, am I to understand that you would attribute her condition to nothing other than being under the influence of a drug?

A. You mean her mental condition?

Q. Yes. A. I do.

Q. Did you make any further examination of her that would give you further evidence to base that opinion on?

A. Yes, between my examination and the nurses' reports, her sleeping most of the time until three o'clock that afternoon; she complained of very little pain until around three o'clock in the afternoon.

Q. Did she give you the impression that she was—aside from this appearance which in your opinion you attribute to the drugged condition—did she give any appearance of being exhausted or suffering from exhaustion or shock?

A. Well, I don't believe she was suffering from any shock; she was rather exhausted.

Q. You stated, Doctor, that she told you or admitted to you that she had taken a nembutal tablet.

A. That's what she told me.

Q. Are you sure she told you she had taken a nembutal tablet or taken a tablet?

A. No, it's a capsule. She said she took the nembutal capsule.

Q. And you saw these capsules?

A. I saw the ones that she had with her, yes.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. What was the color of those capsules?

A. Yellow.

Q. And you stated they were in a bottle?

A. Yes.

Q. You are quite sure they were not in an envelope?

A. Yes sir; they were in a bottle.

Q. At one time in your testimony on direct examination you stated, Doctor, that you prescribed I believe the administration of morphine at three o'clock in the afternoon, and subsequently you used the term morphine injection. Now did she have one or more morphine injections?

A. She had more than one; I don't recall how many but she was supposed to have it around every four hours as necessary for the relief of pain after three o'clock in the afternoon.

Q. Do you recall when the first administration of morphine was made?

A. It was about three o'clock in the afternoon of the tenth.

Q. And that was about the same time that you visited her that afternoon?

A. I think I saw her about that time; I saw her several times during the afternoon and evening of the tenth.

Q. And was it at this time that she made the statements to you regarding the manner in which she fell?

A. I think that it was.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

Q. You prescribed or directed that x-rays be taken of Miss Teutschman; they were taken by the technicians at the hospital?

A. The technicians or the nurses; I don't recall who it was.

Q. They were taken pursuant to your order?

A. That's right.

Q. I will ask you, is it customary for these x-rays to be turned over to even another surgeon without an order from the doctor originally prescribing the x-rays?

A. It is not. I gave a verbal order that he could have the x-rays because I had been dismissed and I didn't see why not.

Q. You had given an order?

A. A verbal order. I didn't put it in writing.

Q. To this doctor—— A. Madoff.

Q. He is an osteopathic surgeon? A. Yes.

Q. To your knowledge do the records of the hospital show whether or not Doctor Madoff called for them or signed for them, or is there any such record kept?

A. There is no such record kept, no.

Q. Now Doctor, in regard to the effect of this osteomyelitis in weakening the bone so as to, as you state, to be in a condition where they fracture more easily, assuming that such a condition does exist and it thereby becomes somewhat less difficult to break a bone of the leg, would there be any lessening in the pain or affect of that injury? What I

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

am getting at is simply this, is the condition of osteomyelitis—does it act in any way upon the effect of an injury from the standpoint of pain? I mean simply, if I had osteomyelitis in this arm and I broke this arm, would I feel as much pain in that injury as if I were not suffering from the disease?

A. I doubt that you would, because you would be having pain steadily along before and be some increase in it, but I don't believe it would be as much as if you had no disease in your arm previous to the fracture. That's my idea of it.

Q. You mean being experienced to pain, your resistance to pain would be somewhat higher?

A. I believe so.

Q. But as a practical matter, leaving aside this pain register, would you say that the suffering would be equivalent in both types of injury, one who broke a leg who did not suffer from osteomyelitis and one who broke a leg suffering from osteomyelitis?

A. The pain would be very similar although it might be slightly less where they had osteomyelitis.

Q. You state that Mrs. Teutschman told you that she had taken a nembatal tablet?

A. Capsule.

Q. Did she indicate at what time she had taken this capsule?

A. She said "last night;" she didn't tell me the time.

Q. And she indicated to you that she had only taken one? A. Yes sir.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. She was brought into the hospital at two-thirty in the morning. Would you say then, Doctor, that if as you state she had taken a nembutal capsule some time prior to her admission to the hospital, would you say that it is customary for a single tablet of a grain and a half, as I think you testified, to leave such a lasting effect?

A. It is not usual.

Q. It is not usual? A. No sir.

Q. You stated that the x-rays of Mrs. Teutschman's leg indicated a spiral fracture of the right femur. Could you recall, Doctor, where the areas of osteomyelitis, bone infection, were in relation to the spiral fracture?

A. As near as I can recall the osteomyelitic area was in the upper third of the femur and also of the pelvis, and as near as I can recall the fracture was about the juncture of the upper and middle thirds of the femur, and I may be wrong because I can picture it but I have no X-ray and that's been a year and a half, nothing to refresh my memory.

Q. Well, perhaps you can help us out in a little lay language. Was any area of bone infection adjacent or coadjacent with the fracture?

A. I don't believe that it was coadjacent; it was adjacent in that it was very near to it, as I recall it.

Mr. Telay: I think that is all, Doctor.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Redirect Examination

By Mr. Devers:

Q. With respect to the osteomyelitis, would the condition from which or with which Mrs. Teutschman was suffering, would that condition in your opinion be in and of itself painful? A. Yes.

Q. Do you think that the infection of the bone and the draining fistulas which you have described would impair her walking ability? A. Yes.

Q. In your opinion would the condition of osteomyelitis have a tendency to make a fracture or a break a more serious injury than it might be without the condition of osteomyelitis?

A. I think it would.

Q. Would the condition of osteomyelitis in your opinion make it more difficult to heal a fracture of the bone in the area or near the area affected by osteomyelitis? A. Yes.

Q. I believe you have given an answer to a question similar to this, but I will ask it again: With respect to her statement that she had taken one nembutal capsule last night, a grain and a half, from her condition as you observed it at the time you saw her at nine o'clock in the morning of the tenth, and throughout that day and to three o'clock that afternoon, and from your knowledge of the effect of nembutal, would you say it was probable that she had taken or received more than one grain and a half capsule?

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

A. That's my private opinion, that she had taken two or more capsules, maybe several; I wouldn't say how many but it's my private opinion she had.

Q. Within what period of time?

A. Within a period of a few hours, three or four hours.

Q. I believe on direct examination, Doctor, after you had described Mrs. Teutschman's incoherent condition I asked you whether that condition as you observed it, or whether in that condition as you observed her, her mental faculties would be numbed. I think that's what counsel had in mind when he asked you the question on cross-examination.

Mr. Telay: That may have been.

Q. (By Mr. Devers): And your answer to that question would be what? A. Yes.

Mr. Devers: That's all.

Recross-Examination

By Mr. Telay:

Q. I would like to ask you, Doctor, if it is not normal and somewhat anticipated in medical practice that a person suffering from a back fracture is in a state of shock for a number of hours after such an injury?

A. Not as a general thing. In some cases it is, but we are just talking about general things now, I believe.

Q. Yes. A. No, I think it is not.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Have you discussed this case previously with representatives of the Pullman Company?

A. Yes sir, representative Singer.

Q. How many times before this appearance today?

A. I believe it was once personally and once on the phone. Do you want me to go ahead and describe——

Q. Yes.

A. Mr. Stacey, the representative, was up here and I talked to him personally; then he called on the phone regarding this interview which we are going through now.

Mr. Telay: I think that's all.

Redirect Examination

By Mr. Devers:

Q. Doctor, do you waive the reading and signing of this deposition?

A. I do.

Mr. Devers: And, Mr. Telay, do I understand you agree to waive the reading and signing?

Mr. Telay: Yes, that is correct.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

State of California,
County of Shasta—ss.

I, Frank W. Shuman, Notary Public in and for the County of Shasta, State of California, duly commissioned and sworn, do hereby certify that the witness in the within deposition named, Doctor H. R. McVicker, was by me prior to the giving of this deposition first duly sworn; that the deposition was taken at the time and place first herein set out and was taken down in shorthand by Harvey D. Prather pursuant to stipulation on file herein; that the signature of the witness was waived both by the witness and counsel for plaintiff, and I return the same herein as transcribed by the reporter.

Dated: Redding, California, August 14, 1947.

FRANK W. SHUMAN,
Notary Public, in and for the County of Shasta,
State of California.

[Endorsed]: Filed September 2, 1947.

DEFENDANT'S EXHIBIT No. 12

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,
Defendants.

DEPOSITION OF ARCHIE V. FRASER

Taken on behalf of the defendants, August 6, 1947,
at Room 1004 Pacific-Southwest Building, 215
West 6th Street, Los Angeles, California, pur-
suant to oral stipulation.

Appearances:

For the Plaintiff: Anthony Pelay, Esq., 833
American Bank Building, Portland 5, Oregon.

For the Defendants: Hart, Spencer, McCulloch
and Rockwood, by Richard Devers, Esq., Portland,
Oregon.

Mr. Devers: If there is no objection, I would
like to dictate a stipulation for the record.

Mr. Pelay: Yes.

Mr. Devers: Supplementing the stipulation
which has been filed of record herein, it is now
stipulated that the deposition of the witness Archie

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

V. Fraser may be taken before Clifton Clay, Notary Public, at this time in Los Angeles, California, pursuant to the Federal Rules of Civil Procedure.

Mr. Pelay: So stipulated.

ARCHIE V. FRASER

produced as a witness on behalf of the defendants, pursuant to the above oral stipulation, and having been by Clifton Clay, the Notary Public in said stipulation named, before testifying, duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the above entitled and numbered cause now pending in said Court, testified as follows:

Direct Examination

By Mr. Devers:

Q. Mr. Fraser, do you waive the reading and the signing of your deposition? By that I mean is it agreeable to you for the deposition to be transcribed and filed in court without your having read and signed it? A. Yes.

Mr. Devers: Off the record, please, Mr. Reporter.

(Discussion off the record.)

Do you, Mr. Pelay, stipulate that the reading and the signing of the deposition by the witness may be waived?

Mr. Pelay: I am agreeable to that stipulation.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. (By Mr. Devers): What is your business, Mr. Fraser?

A. Distributing and selling—distributing and selling liquefied petroleum gas equipment and the selling and distributing of petroleum products nationally and for export.

Q. Where do you reside?

A. Bass Lake, California.

Q. How long have you resided in that vicinity?

A. In that vicinity for the last three years.

Q. Mr. Fraser, Southern Pacific passenger train No. 18 left Martinez en route to Portland, Oregon, on January 9, 1946, at, I believe, approximately 10 o'clock. Do you recall whether you were a passenger on that train?

A. Yes, I believe I was a passenger on the train. I have the records of the tickets included in my expense account in my office; but, as I recall, that is the train.

Q. Did you occupy a Pullman berth?

A. Yes, as I recall Lower No. 14.

Q. Do you remember the car number?

A. No. It would probably be reflected on the tickets.

Q. Did you observe the occupant of Upper 14 on your car, the occupant of that berth, from Martinez north? A. Yes.

Q. Was that occupant a man or a woman?

A. A woman.

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

Q. What is your recollection of the approximate time the train left Martinez?

A. Approximately 10 o'clock.

Q. Did you see the occupant of Upper 14 board the train? A. No.

Q. Did you see her on the car before she arrived—— A. (Interrupting): Yes.

Q. Where were you at the time you saw her?

A. In the passageway near the men's rest room.

Q. Where was she?

A. Leaning against the wall at the end of the train, as I recall it, near the men's dressing room.

Q. About how far apart were you?

A. Well, we were close enough to touch on two or three occasions.

Q. Was any one with her?

A. No, she was alone.

Q. Will you describe her appearance, her clothing, and her physical bearing?

A. She was leaning on a violin case, apparently for support or—I believe for support because she wasn't where a rail could be held very readily; and her appearance was not what you would call neat. It might have been a little unkempt. I particularly noticed her because of the fact that I believe it was her right leg had a stocking rather disheveled and hanging low, and for a moment or two I thought she might have had an artificial limb. And the rest of her clothes indicated that, being a little disheveled, she either had been traveling a long time or

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

was a little careless about her hair. She just wasn't too neat in her appearance, but that was probably the result of noticing the stocking hanging.

Q. Did you observe her conduct while you observed her?

A. She was standing quite still, I would say, with the movement of the train—it was shortly after we had left the station. She seemed to be alone; didn't endeavor to move or walk very much; endeavored perhaps to stay out of the way of the passengers walking back and forth and looking perhaps a little bit lost. I mean I was wondering whether she might possibly be feeling a little intoxicated. She was looking as though she could use some help.

Q. When you say she appeared as though she needed help, what do you mean? Can you be more specific? Did she appear to be ill or injured?

A. Well, not necessarily; but she did indicate to me; and this is purely my opinion from the looks of her face, her eyes, and so forth, that she possibly might have been drinking. And I did make it a point to observe her on my return trip down to the end of the car to the rest room for a drink of water; and at that time I thought in my mind that she had not been drinking. In other words, I have just never seen any one that looked exactly that way that had been drinking. I discounted it. She might have taken something else, or it might have been a characteristic of her; but her eyes did seem unduly stary or glassy.

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

Q. Did you smell any liquor on her body or——

A. (Interrupting): Not at all.

Q. Was any one else within close proximity to the two of you?

A. Well, there were several walking back and forth from time to time, waiting for the berths to be made up, several of the people.

Q. How long a period of time would you say you observed her at that end of the car?

A. Three or four times during a period of probably half an hour.

Q. Why were you at that end of the car as the train pulled out of Martinez?

A. Waiting for my berth to be made up and conveniently getting out of the way with a smoke in the rest room.

Q. Did this woman who occupied Upper 14—did you notice her stagger?

A. No, but she didn't seem to be able to walk easily. By that I mean it might not have been a stagger, it might possibly have been a bit of a limp or it might have been a stagger. I didn't think it was a stagger. I did think, because of the appearance of her stocking, that at first she might have had an artificial leg. After a while she moved along all right. I had only seen her take two or three steps, you might say, about the time I was ready to retire. And she was definitely taking care of the violin case by leaning on it for support.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Do you know whether she had any other luggage with her that you saw?

A. That was all I saw, and that was unfortunately one of the reasons she was odd. There was no hat, as I recall. I won't say for sure she was not wearing a hat; but if she was, it certainly didn't look dressed up the way a person usually tries to look on a trip.

Q. You say you were waiting for the porter to make up your berth. Do you know whether the porter was also at that time making up Upper 14.

A. I believe he was, because they were both made up. When mine was made up, they were both completed.

Q. Now prior to the arrival of the train at Martinez, do you know whether any one occupied Upper 14? A. I don't know.

Q. Was the seat transformed into a berth before the train got into Martinez?

A. Yes, but it wasn't completed. It was well along towards completion.

Q. But it had not been made up completely?

A. That is right. At least mine had not. I had slipped my bag under; and the pillowcase, as I recall, was not on. There were two or three things to be done.

Q. Did you see any one in Upper 14 either before the arrival of the train at Martinez or immediately after its arrival and prior to the occupancy of Upper 14 by this woman? A. No.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Do you know whether you retired before the occupant of upper No. 14?

A. Yes. I retired——

Q. (Interrupting): You retired first?

A. I retired first.

Q. At the time you retired, were there curtains——

A. (Interrupting): I am quite sure I retired first. It has been quite a while now; but I recall that I retired first and then the porter assisted her in with a ladder afterwards. And she endeavored to crawl in by herself, and I know the porter definitely stopped her and brought a ladder. And it was my impression that she had not been accustomed to getting in an upper berth. She wasn't familiar with it at all. And I think I was in my lower berth then. It was quite a little while ago; but I am virtually positive I was retired, because I hadn't been standing in the alleyway watching it.

Q. When you say she attempted to enter the berth herself, by that you mean she attempted to without the use of a ladder?

A. Yes, and I heard the porter asking her not to and to wait, that she couldn't possibly get in that way. And he brought a ladder and hooked it on.

Q. Did she use the ladder?

A. Yes, and the porter stayed there until she was in. I was in the lower berth all right, because I distinctly recall her having got in overhead and there was very little sound after she was in. In

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

other words, she apparently went to sleep very quickly or certainly did not fuss around much. I am not even sure she took time to undress.

Q. At the time you retired, were there curtains across the berth, your Lower 14?

A. Oh, yes.

Q. Was there also a curtain across Upper 14?

A. I believe there was.

Q. Do you know whether there was?

A. I would say there was definitely—to the best of my recollection there was.

Q. Was there a curtain from the top of Upper 14 to the bottom of it, regardless of whether it was closed? Was there a curtain on the berth?

A. Yes.

Q. Do you recall whether the porter, after the woman occupied Upper 14, closed the curtains?

A. No, I don't recall because I couldn't see. I was definitely in my berth. But I could hear them hook the ladder on and the conversation of helping her and the joustling against my curtains. When he took the ladder away, she was definitely in. I do not recall whether I heard him sliding any curtains or anything after that.

Q. Did you hear any conversation between this woman and the porter concerning the berth, whether it was her berth or not or any argument between the two?

A. I think the porter asked her if it was her berth, and outside of that I don't recall the conversation.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Did you hear her object to entering Upper 14? A. No.

Q. Were you awakened for any reason during the night? A. Yes.

Q. What caused you to awaken, do you know?

A. Yes, it was apparently the sound of her having fallen out of the berth. I say that because she did—she apparently—she was on the floor, apparently outside my berth at the time, and there was a small outcry, not very large, but enough to awaken me; and some one farther down the train called either the porter or the conductor or the passenger agent, and they came to assist her at that time.

Q. Were your curtains closed—

A. (Interrupting) Yes.

Q. (Continuing) —at that time?

A. Yes.

Q. Did you look out into the aisle?

A. No.

Q. How do you know that it was the occupant of Upper 14?

A. After some assistance arrived, I looked out and saw that it was her.

Q. When you looked out then, did you notice the condition of the curtains? A. No.

Q. At any time during the trip did you notice this woman taking a drink of water? A. No.

Q. I hand you Defendants' Pretrial Exhibit No. 5 and ask you to examine it. In fact, here are De-

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Defendants' exhibits, pretrial exhibits, Nos. 6, 7, and 8. These purport to be pictures of a Pullman car with berths and curtains comparable to the car in which you were riding. Please look at Exhibit No. 8. Now do you recall whether you noticed the top of your curtain and the bottom of the Upper 14 curtain were fastened in the manner shown in Defendants' Pretrial Exhibit No. 8?

A. I do not know about the upper curtain, but I know that mine was fastened—whether in exactly this manner or not, I am not positive. But in my mind it was definitely fastened.

Q. Do you know whether the upper portion of the curtain and the lower portion of the curtain constitutes one complete curtain designed so that occupants of both the upper and the lower berth may enter independently of one another?

A. Yes, they may do that.

Q. At the time you retired, do you recall the condition of the curtains on Upper 14, whether they were closed or partially closed?

A. It would be my opinion that they were closed, because——

Q. (Interrupting) But you do not know?

A. I do not know positively. If they were opened, it would probably be more easily recalled.

Mr. Devers: I think that is all.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Cross-Examination

By Mr. Pelay:

Q. Mr. Fraser, did I understand you correctly when I understood you to say that the occupant of Upper 14 boarded the train shortly before Martinez?

A. No, I don't know when she boarded the train. I saw her shortly after we left Martinez.

Q. And you had Lower 14? A. Yes.

Q. In so far as her appearance was concerned, would you say that other than her general appearance of—you mentioned that she appeared disheveled. Was there anything that led you to believe that she was under any unusual circumstances?

A. Well, as I mentioned earlier, my first thought was that she probably had an artificial limb, which I believe was the right leg, because of the way the stocking was hanging. The leg seemed stiff. Afterwards, as she walked, I was quite sure that wasn't the case. But I did think there was something a little difficult in her movements.

Q. From your observation could you attribute that impression to perhaps the existence of some physical disability? A. That, yes.

Q. What would you estimate her age to be?

A. Oh, perhaps 45.

Q. Did she give you the appearance of being tired, perhaps from traveling?

A. From something. She was undoubtedly tired and weary.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. You said on direct examination that your first impression was that she might have been under the influence of liquor. Then you stated—I believe I am correct—that you revised that opinion?

A. Yes.

Q. You felt that she was acting normally but somewhat——

A. (Interrupting) Normally, but there was obviously some irregularity in the appearance of her face, it would seem to me, something enough to draw my attention, sufficiently outstanding.

Q. From that you had not been able to form any opinion, from your observation?

A. No.

Q. Now you were in Lower 14 at the time the Pullman porter assisted the occupant of Upper 14 into her berth; is that correct? A. Yes.

Q. Were your curtains drawn at that time?

A. They were drawn. I hadn't buttoned them tightly, but they were drawn.

Q. Now from your observation of her conduct would you say that she appeared to be familiar with the Pullman berths or not?

A. I believe she was not, certainly not with upper berths.

Q. Did that seem pretty obvious to you?

A. Yes.

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

Q. Now you could not state definitely whether or not—I am sorry, I am leading you perhaps—could you state definitely or not as to the condition of the curtains while she was occupying that berth? Were they open or were they closed?

A. While she was occupying the berth?

Q. Yes.

A. I couldn't say, because I couldn't see them after she got in.

Mr. Pelay: That is all.

Redirect Examination

By Mr. Devers:

Q. You testified on cross-examination that because of the manner in which she entered the upper berth it appeared to you that she was not familiar with berths on trains, at least upper berths?

A. Yes.

Q. What was the primary basis for that conclusion, that she wanted to enter without the use of a ladder?

A. Yes, that she had definitely endeavored to enter without the use of a ladder.

Q. But the porter insisted that she use a ladder?

A. Yes.

Q. So she got into the berth, so far as you know, safely?

A. Yes.

Q. You testified on cross-examination that you might attribute your impression of her to a physical disability. I take it you are limiting that impression to her apparent limp?

A. That is right.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. That does not apply to your impression that because of a stary eye and the other condition there was something else——

A. (Interrupting) No.

Q. (Continuing) ——probably wrong?

A. No, something else.

Q. But the impression you might attribute to a physical disability I take it you got from the limp?

A. The limp—I wouldn't say the limp: the apparent limp or difficulty with the leg. My reason for that is the fact that I have a limp in my own leg and I may be a little more conscious of noticing it in others.

Q. How old are you, Mr. Fraser?

A. I am 38.

Q. You testified that she appeared to be about 45. Do you think that she was at that age?

A. She might be anywhere between 35 and 50. I just——

Q. (Interrupting): Between 35 and 50?

A. Anywhere there. I am not accurate on diagnosing the age——

Q. (Interrupting) Do you know her name?

A. No.

Mr. Devers: That is all.

Mr. Pelay: That is all.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

State of California,
County of Los Angeles—ss.

I, Clifton Clay, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

That prior to being examined the witness named in the foregoing deposition was by me sworn to testify the truth, the whole truth, and nothing but the truth;

That the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this 22d day of August, 1947.

CLIFTON CLAY,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: No. 11840. United States Circuit Court of Appeals for the Ninth Circuit. The Pullman Company, a corporation, Appellant, vs. Maggie Mae Teutschman, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed January 26, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11840

MAGGIE MAE TEUTSCHMAN,

vs. Appellee,

SOUTHERN PACIFIC COMPANY, a Kentucky
corporation,

Defendant,

and

THE PULLMAN COMPANY, an Illinois corpora-
tion,

Appellant.

MOTION

Comes now The Pullman Company, appellant above named, and moves the court for an order dispensing with the necessity for reproducing in the printed record on appeal herein, plaintiff's Exhibits 1, 2, 3, 4, 5 and defendants' Exhibits 51½, 6, 7, 8, 9, 10 and 13, and providing that such exhibits will be considered in their original form without reproduction. This motion is based upon the affidavit of M. B. Strayer and the stipulation of appellant and appellee hereto attached.

Dated at Portland, Oregon, this 29th day of January, 1948.

M. B. STRAYER,

HART, SPENCER,

McCULLOCH & ROCKWOOD,

Attorneys for Appellant.

So ordered: FRANCIS A. GARRECHT,
Senior United States
Circuit Judge.

State of Oregon,
County of Multnomah—ss.

Due service of the within motion is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,
Of Attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, M. B. Strayer, being first duly sworn, depose and say:

That I am one of the attorneys for appellant, The Pullman Company, in the above entitled cause. Plaintiff's Exhibits 1, 2, 3, 4 and 5 are statements showing various expenses incurred by plaintiff-appellee and were introduced in evidence solely for the purpose of showing the amount of special damages sustained. Defendants' Exhibit 9 is a working diagram of Pullman Car 4199 and was introduced in evidence solely for the purpose of showing that the berth assigned to plaintiff-appellee prior to her injury was the only space available. Defendants' Exhibit 10, purporting to be a statement signed by plaintiff-appellee, and defendants' Exhibit 13, the adverse party deposition of plaintiff-

appellee, were introduced in evidence solely for purposes of impeachment of plaintiff-appellee. None of the exhibits mentioned above is material to the questions raised in this appeal.

Defendants' Exhibits 5½, 6, 7 and 8 are photographs of the interior of a Pullman car and are material in considering the questions raised in this appeal, but, because of their character, they cannot practicably be reproduced in the printed record on appeal.

/s/ M. B. STRAYER,

Subscribed and sworn to before me this 29th day of January, 1948.

[Seal] /s/ FREDERICK H. TORP,

Notary Public for Oregon.

My commission expires July 5, 1950.

[Endorsed]: Filed January 31, 1948.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated by appellant and appellee, through their respective attorneys of record, that plaintiff's Exhibits 1, 2, 3, 4 and 5 and defendants' Exhibits 9, 10 and 13 are not material to the questions raised in this appeal and that defendants' Exhibits 5½, 6, 7 and 8 are photographs which cannot practicably be reproduced in the printed record on appeal. Application is therefore made for an

order dispensing with the necessity of printing such exhibits and providing that they may be considered in their original form without reproduction in the printed record on appeal.

Dated at Portland, Oregon, this 29th day of January, 1948.

/s/ M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Appellant.

/s/ T. H. RYAN,
Of RYAN & PELAY,
Attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT WILL RELY ON APPEAL

To the Clerk of the Above Entitled Court:

The appellant, for its statement of points upon which it will rely on appeal, hereby adopts the statement of points appearing in the certified transcript of record herein.

/s/ M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Appellant,
The Pullman Company.

State of Oregon,
County of Multnomah—ss.

Due service of the within statement of points upon which appellant will rely on appeal is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,

Of attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL TO BE PRINTED

To the Clerk of the Above Entitled Court:

The record on appeal having been transmitted by the clerk of the District Court to the clerk of the United States Circuit Court of Appeals, the appellant hereby designates the following to be included in the printed transcript of record herein:

1. The entire certified transcript of record herein, including reporter's transcript of testimony, depositions and original exhibits, except such exhibits as the court may order shall be considered in their original form without the necessity of reproducing in the printed record.
2. Statement of points upon which appellant intends to rely on appeal in the Circuit Court of Appeals.

3. Designation of contents of record on appeal to be printed.
4. Order (if granted by the court) dispensing with the necessity of printing exhibits.

/s/ M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
1410 Yeon Building,
Portland 4, Oregon.
Attorneys for Appellant.

State of Oregon,
County of Multnomah—ss.

Due service of the within designation of contents of record on appeal to be printed is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,
Of Attorneys for Appellee.

